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# *The* NORTH CAROLINA *REGISTER*

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# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. **1:1 NCR 101-201, April 1, 1980** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1980.

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# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
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*****	*****	*****	*****	*****
01/02/90	12/07/89	12/14/89	02/01/90	05/01/90
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02/15/90	01/25/90	02/01/90	03/17/90	06/01/90
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12/02/91	11/07/91	11/14/91	01/01/92	04/01/92

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

EXECUTIVE ORDER NUMBER 100

EXTENSION OF EXECUTIVE ORDER NUMBER  
98

Whereas, at the request of the Governor of South Carolina and for the purpose of relieving human suffering caused by Hurricane Hugo, by Executive Order Number 98, I ordered the waiving of weight restrictions, licensing and tax requirements for vehicles transporting, out of South Carolina, trees uprooted or damaged by Hurricane Hugo; and

Whereas, Executive Order Number 98 expired on December 4, 1989; and

Whereas, the Governor of South Carolina has requested me to extend the effective date of Executive Order Number 98; and

Whereas, extensive tree damage occurred within North Carolina as a result of Hurricane Hugo and the North Carolina forestry industry has requested that the terms and conditions of Executive Order Number 98 apply to vehicles transporting, from within North Carolina, trees uprooted or damaged by Hurricane Hugo;

Therefore, pursuant to Chapter 166A, the North Carolina Emergency Management Act,

and by the authority vested in me as Governor of the State of North Carolina by the Constitution and laws of this state, and with the concurrence of the Council of State; IT IS ORDERED;

That the term of Executive Order Number 98 is hereby extended until February 3, 1990 subject to the following additional conditions;

Section 1: The waiver of weight restrictions will conform to the following guidelines:

- (1) Vehicle weight will not exceed the maximum gross vehicle weight criteria established by the manufacturer or 90,000 lbs. gross vehicle weight, whichever is less.
- (2) Tandem axle weights shall not exceed 42,000 lbs., and single axle weights shall not exceed 22,000 lbs.

Section 2: The terms and conditions of Executive Order Number 98 and the vehicle weight guidelines set forth in Section 1 above shall extend to vehicles transporting, from within North Carolina, trees uprooted or damaged by Hurricane Hugo.

This the 14th day of December 1989.

TITLE 2 - DEPARTMENT OF  
AGRICULTURE

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Gasoline and Oil Inspection Board intends to amend rule(s) cited as 2 NCAC 42 .0102, .0201.*

*The proposed effective date of this action is May 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on February 15, 1990 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.*

*Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to N. David Smith, Secretary of the North Carolina Gasoline and Oil Inspection Board, P.O. Box 27647, Raleigh, North Carolina 27611.*

CHAPTER 42 - GASOLINE AND OIL  
INSPECTION BOARD

SECTION .0100 - PURPOSE AND DEFINITIONS

.0102 DEFINITIONS

Except as otherwise defined in Chapter 119, North Carolina General Statutes, the definitions applicable in this Chapter are as follows:

- (1) "ASTM" means the American Society for Testing and Materials.
- (2) "Approved denaturant(s)" means materials used for denaturing ethyl alcohol for use as a motor fuel which have been approved by the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms and the director.
- (3) "Approved lead substitute" means an EPA registered gasoline additive formulated to reduce valve seat recession in engines designed to operate on leaded gasoline and which has been approved by the Director. Such approval shall be based upon the submission of scientific documentation acceptable to the Director.
- (4) ~~(2)~~ "Board" means the Gasoline and Oil Inspection Board.
- (5) ~~(4)~~ "Cetane number" means the relative ignition quality of diesel fuels by the ASTM Cetane Method D-613.
- (6) ~~(5)~~ "Denatured fuel ethanol" means ethanol meeting the provisions of ASTM D-4806, "Standard ~~Specifications~~ Specification for Denatured Fuel Ethanol to be Blended with

Gasolines for Use as an Automotive Spark-Ignition Engine Fuel".

- (7) ~~(6)~~ "Director" means the director of the Standards Division of the North Carolina Department of Agriculture.
- (8) ~~(7)~~ "EPA" means the United States Environmental Protection Agency.
- (9) ~~(8)~~ "Gasoline-oxygenate blend" means a blend consisting primarily of gasoline and a substantial amount of one or more oxygenates. This definition includes, but is not limited to the following designations:
  - (a) Gasohol meaning any motor fuel containing a nominal ten volume percent anhydrous denatured ethanol and 90 volume percent unleaded gasoline, regardless of other name, label, or designation.
  - (b) Leaded gasohol meaning any motor fuel containing a nominal ten volume percent anhydrous denatured ethanol and 90 volume percent leaded gasoline, regardless of other name, label, or designation.
  - (c) Any gasoline-oxygenate blend which meets the EPA's "Substantially Similar" rule.
  - (d) Any gasoline-oxygenate blend for which there is an existing Clean Air Act waiver issued by EPA.
  - (e) Any gasoline-oxygenate blend which is not subject to EPA fuel requirements, but for which approval has been granted by the board for sale in North Carolina.
- (10) ~~(9)~~ "Leaded" means any gasoline or gasoline-oxygenate blend which contains not less than 0.05 ~~grams~~ gram lead per U.S. gallon (0.013 ~~grams~~ gram lead per liter) or contains an approved lead substitute which provides a lead equivalency of at least 0.10 gram lead per U.S. gallon (0.26 gram per liter).
- (11) ~~(10)~~ "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons or mixtures of same: propane, propylene, butanes (normal or iso-butane), and butylenes.
- (12) ~~(11)~~ "Motor Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Motor Method (D-2700).
- (13) ~~(12)~~ "Octane Index" means the number obtained by adding the research octane number and the motor octane number and dividing the sum by two.
- (14) ~~(13)~~ "Oxygenate" means an oxygen containing, ashless organic compound, such as an alcohol or an ether, which may be used as a fuel or a fuel supplement.

(15) ~~(14)~~ "Oxygenated fuel" means a liquid fuel which is a homogeneous blend of hydrocarbons and oxygenates.

(16) ~~(15)~~ "Qualitative word or term" means any word or term used in a brand name which by definition or customary usage indicates a level of quality, classification, grade, or designation.

(17) ~~(16)~~ "Regular" when used as part of a brand name and/or as a grade designation for gasoline or gasoline-oxygenate blend shall be construed to mean a leaded regular grade commercial automotive gasoline or gasoline-oxygenate blend unless the brand name and/or grade designation also contains the word "Unleaded" or a word or term of equivalent meaning.

(18) ~~(17)~~ "Research Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Research Method (D-2699).

(19) ~~(18)~~ "Substantially Similar" rule means the U.S. Environmental Protection Agency's "Substantially Similar" rule, Section 211 (f) (1) of the Clean Air Act [42 U.S.C. 7545 (f) (1)].

(20) ~~(19)~~ "Total alcohol" means the aggregate total in volume percent of all alcohol contained in any fuel defined in this Chapter.

(21) ~~(20)~~ "Total oxygenate" means the aggregate total in volume percent of all oxygenates contained in any fuel defined in this Chapter.

(22) ~~(21)~~ "Unleaded" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.05 ~~grams~~ gram lead per U.S. gallon (0.013 ~~grams~~ gram lead per liter) and not more than 0.005 ~~grams~~ gram phosphorus per U.S. gallon (0.0013 ~~grams~~ gram phosphorus per liter).

Documents referred to in this Rule are hereby adopted by reference in accordance with G.S. 150B-14(c) and are available for inspection in the Office of the Director of the Standards Division.

Statutory Authority G.S. 119-26.

## SECTION .0200 - QUALITY OF LIQUID FUEL PRODUCTS

### .0201 STANDARD SPECIFICATIONS

(a) The Board hereby adopts by reference in accordance with G.S. 150B-14(c), ASTM D-4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard speci-

cation for gasoline with the following modifications:

(1) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said applications shall contain evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;

(2) The minimum lead content for gasoline registered and/or labeled as "leaded" or "regular" ~~shall be as defined in Rule .0102(10) of this Chapter; shall contain not less than 0.05 grams lead per U.S. gallon (0.013 grams lead per liter);~~

(3) Reid vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.

(b) The Board hereby adopts by reference in accordance with G.S. 150B-14(c), ASTM D-4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for gasoline/oxygenate blends with the following modifications:

(1) A vapor pressure tolerance not exceeding one pound per square inch may be allowed for gasohol, leaded gasohol, and gasoline-oxygenate blends;

(2) Reid vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;

(3) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said

applications shall contain evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;

- (4) The minimum temperature at 50 percent evaporated shall be 158 degrees F. (70 degrees C.) as determined by ASTM Test Method D-86;
- (5) The minimum lead content for gasoline oxygenate blends registered and or labeled as "leaded" or "regular" shall be as defined in Rule .0102(10) of this Chapter; shall contain not less than 0.05 grams lead per U.S. gallon (0.013 gram lead per liter);
- (6) Octane rating shall not be less than the octane index certified on the brand name registration as required by 2 NCAC 42 .0500;
- (7) Oxygenate Content.
  - (A) Gasohol and leaded gasohol shall contain 10 plus minus 0.5 volume percent denatured fuel ethanol.
  - (B) Gasoline-oxygenate blends not otherwise defined in this Chapter, may contain, maximum or minimum as appropriate, the percentage and type of oxygenates as certified on the brand name registration as required by 2 NCAC 42 .0500, subject to compliance with other specifications as provided in this Subparagraph;
- (8) Water tolerance shall be such that no phase separation occurs when subjected to a temperature equal to the temperatures specified in Table 4, ASTM D-4814.
  - (c) The Board hereby adopts by reference in accordance with G.S. 150B-14(c), ASTM D-975, "Standard Specification for Diesel Fuel Oils" as standard specification for diesel motor fuels with the following modification: For diesel motor fuel grade 2-D, the minimum flash point as determined by ASTM Test Method D-56 shall be 115 degrees F. (46 degrees C.).
  - (d) The Board hereby adopts by reference in accordance with G.S. 150B-14(c), ASTM D-396, "Standard Specification for Fuel Oils" as standard specification for fuel oils.

(e) The Board hereby adopts by reference in accordance with G.S. 150B-14(c), ASTM D-3699, "Standard Specification for Kerosene" as standard specification for kerosenes with the following modification: For grade 2-K, the presence or absence of coloring matter shall in no way be determinative of whether a substance meets the requirements of this grade of kerosene.

(f) In addition to meeting all specification requirements as set forth in this Rule, each fuel must be suitable for the intended use.

(g) ASTM documents adopted by reference herein are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost as determined by the publisher by contacting ASTM, 1916 Race Street, Philadelphia, PA 19103.

*Statutory Authority G.S. 119-26; 150B-14.*

## TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services intends to amend rule(s) cited as 10 NCAC 7A .0209; 8D .0801, .1105; 10C .0205, .0209; 10D .1615, .1635, .1637 - .1638; 10F .0001 - .0002, .0030, .0032, .0034, .0039 - .0040, .0042; 10G .0902, .0904, .0905, .0907, .0908, .0909, .0912; adopt rule(s) cited as 10 NCAC 7A .0303; 8B .0715 - .0721; 10A .0319; repeal rule(s) cited as 10 NCAC 8B .0701-.0714.*

*The proposed effective dates of these action are June 1, 1990 and July 1, 1990.*

*The public hearing will be conducted at 1:30 p.m. on February 21, 1990 at Archdale Building, Hearing Room (Ground Floor), 512 North Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-7247. Written comments on these rule changes may be sent to Mr. Barkley at the above address. Written and oral comments (no more than ten minutes for oral comments) on these rule changes may be presented at the public hearing. Notice should be given to Mr. Barkley at least three days prior to the public hearing if you desire to speak.*



**CHAPTER 7 - HEALTH: EPIDEMIOLOGY**

**SUBCHAPTER 7A - ACUTE COMMUNICABLE DISEASE CONTROL**

**SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES**

**.0209 CONTROL MEASURES**

(d) The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection:

- (1) Infected persons shall:
  - (A) refrain from sexual intercourse unless condoms are used; exercise caution when using condoms due to possible condom failure;
  - (B) never share needles or syringes;
  - (C) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
  - (D) have a skin test for tuberculosis;
  - (E) notify future sexual intercourse partners of the infection; if the time of initial infection is known, notify persons who have been sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, notify persons who have been sexual intercourse and needle partners for the previous year.
- (F) upon request, disclose their HIV status to the attending physician or oral surgeon prior to receiving care involving the delivery of newborns or surgical entry into tissues, body cavities, or organs.

*Statutory Authority G.S. 130A-144; 130A-148.*

**SECTION .0300 - SPECIAL CONTROL MEASURES**

**.0303 RECORDING THE SALES OF BIRDS**

(a) A business engaged in the retail sale of birds shall maintain a record of each sale for at least six months after the sale. The record shall include the name and address of the purchaser of each bird. The record shall be made available to the Department upon the request of the Department.

(b) This rule shall not apply to the sale of birds for hunting, scientific, educational, agricultural or food purposes.

*Statutory Authority G.S. 130A-144.*

**CHAPTER 8 - HEALTH: PERSONAL HEALTH**

**SUBCHAPTER 8B - MATERNAL AND CHILD HEALTH**

**SECTION .0700 - ADOLESCENT PREGNANCY: PREMATURITY AND PREVENTION PROJECT**

- .0701 GENERAL (REPEALED)**
- .0702 DEFINITIONS (REPEALED)**
- .0703 ADOLESCENT PREGNANCY/ PREMATURITY PREVENTION ADVISORY BOARD (REPEALED)**
- .0704 PROVIDER ELIGIBILITY (REPEALED)**
- .0705 APPLICATIONS FOR FUNDS (REPEALED)**
- .0706 APPLICATION EVALUATION CRITERIA (REPEALED)**
- .0707 SELECTION CRITERIA (REPEALED)**
- .0708 USE OF PROGRAM FUNDS (REPEALED)**
- .0709 BUDGETING OF GRANT FUNDS (REPEALED)**
- .0710 EVALUATION AND MONITORING (REPEALED)**
- .0711 CLIENT ELIGIBILITY (REPEALED)**
- .0712 CLIENT FEES (REPEALED)**
- .0713 ANNUAL REPORT (REPEALED)**
- .0714 RENEWAL OF GRANT FUNDS (REPEALED)**

*Statutory Authority S.L. 1985, c. 479, s. 102.*

**.0715 GENERAL**

The Adolescent Pregnancy Prevention Program shall be administered by the Division of Maternal and Child Health, North Carolina Department of Environment, Health and Natural Resources, Post Office Box 27687, Raleigh, North Carolina, 27611, (919) 733-7791.

*Statutory Authority S.L. 1989, c. 752, s. 136.*

**.0716 DEFINITIONS**

The following definitions shall apply throughout this Subchapter:

- (1) "APPP" means the Adolescent Pregnancy Prevention Program administered by the Division of Maternal and Child Health.
- (2) "Division of MCH" means the Division of Maternal and Child Health, Department of Environment, Health and Natural Resources.
- (3) "Contractor" means a county or district health department or other public or private agency receiving APPP Project funds.
- (4) "Adolescent" means any individual 19 years of age and under.
- (5) "Major Equipment" means any fixed asset that has a unit cost of two thousand dollars (\$2,000) or more.
- (6) "Minor Remodeling" means any building or facility reconstruction project having a total cost of two thousand dollars (\$2,000) or less.

*Statutory Authority S.L. 1989, c. 752, s. 136.*

**.0717 GRANT PROPOSALS**

(a) Grants shall be awarded through a request for proposal (RFP) process that includes notification of potential applicant agencies of the eligibility criteria and requirements for funding.

(b) Grant proposals shall include information specified in Chapter 752, Section 136, 1989 Session Laws, and other information required by the Division of MCH in the RFP.

*Statutory Authority S.L. 1989, c. 752, s. 136.*

**.0718 MAXIMUM FUNDING LEVEL**

The maximum level of funding for any one project in the first year shall be sixty thousand dollars (\$60,000).

*Statutory Authority S.L. 1989, c. 752, s. 136.*

**.0719 OPERATING STANDARDS**

(a) Upon approval of a proposal for grant funds a budget shall be negotiated and a contract shall be signed between the Contractor and the MCH Division.

(b) Project funds shall be used solely for the purposes detailed in the approved proposal and budget. Expenditures for equipment require prior MCH Division approval.

(c) Contractors shall not use APPP funds for purposes that are prohibited by statute, or for the following purposes:

- (1) purchase of inpatient care;
- (2) purchase or improvement of land;
- (3) purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility; or
- (4) purchase of major equipment.

(d) APPP projects shall not impose charges on clients for services.

(e) Staff qualifications, training, and experiences shall be appropriate for implementing project activities.

(f) Each project shall participate in regional meetings with state staff and other project staff.

(g) The start-up period before project activities are implemented shall not exceed six months.

(h) Each project shall obtain approval from the MCH Division prior to making changes in program goals, objectives, and target populations during the Five Year Funding period.

(i) Each project shall establish and implement a program review process on an ongoing basis.

*Statutory Authority S.L. 1989, c. 752, s. 136.*

**.0720 EVALUATION AND MONITORING**

(a) The Division of MCH shall make site reviews of Contractors to assess program performance.

(b) The Division of MCH shall make periodic site visits to contractors to provide technical assistance and consultation.

(c) The Contractor shall submit in a format established by the Division of MCH, a mid-year progress report and an annual report of each year, on a schedule to be determined by the Division of MCH. The report shall include an evaluation addressing progress in meeting the objectives outlined in the application.

*Statutory Authority S.L. 1989, c. 752, s. 136.*

**.0721 RENEWAL OF GRANT FUNDS**

(a) Contracts for APPP projects are subject to annual renewal for a 5 year period based upon the criteria stated in these rules and contingent upon the availability of funds for this purpose.

(b) A contractor that violates any of the provisions of these rules may have APPP funding reduced or discontinued. The final decision to reduce or discontinue funding shall be made by the Commission for Health Services.

*Statutory Authority S.L. 1989, c. 752, s. 136.*

**SUBCHAPTER 8D - CHILDREN'S SPECIAL HEALTH SERVICES: DEVELOPMENTAL DISABILITIES BRANCH**

**SECTION .0800 - ADOPTION**

**.0801 GENERAL PROVISION**

(a) A child with a supported medical condition, confirmed by a Children's Special Health Services rostered physician, is eligible for program support after adoption ~~without meeting the financial eligibility requirements of 10 NCAC 1C~~ if the conditions of this Section are met.

*Statutory Authority G.S. 130A-124.*

**SECTION .1100 - NORTH CAROLINA HEMOPHILIA ASSISTANCE PLAN**

**.1105 SERVICES**

(a) The following services shall be provided to patients eligible for assistance under NCHAP:

- (1) provision of Factor VIII and Factor IX blood derivatives; and
- (2) provision of dental care, diagnostic studies, drugs, physical therapy, psychiatric or psychosocial care, prosthetics or orthotics, and cost of transportation in obtaining this care.

(b) The individual per patient allocation for services may not exceed the sum of ~~two thousand five hundred dollars (\$2,500)~~ three thousand seven hundred fifty dollars (\$3,750.00) per state fiscal year.

*Statutory Authority G.S. 130A-124.*

**CHAPTER 10 - HEALTH: ENVIRONMENTAL HEALTH**

**SUBCHAPTER 10A - SANITATION**

**SECTION .0300 - SANITATION OF LODGING PLACES**

**.0319 FOOD SERVICE**

Food preparation or food service activities shall meet the requirements of 10 NCAC 10A .0400, "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments."

*Statutory Authority G. S. 130A-248.*

**SUBCHAPTER 10C - SOLID WASTE AND VECTOR CONTROL**

**SECTION .0200 - STATE AID FOR MOSQUITO CONTROL**

**.0205 AGREEMENTS**

(b) The applicant ~~will~~ shall assume the following obligations in any agreement:

- (6) to submit an accounting of expenditures quarterly on forms supplied by the Department of ~~Human Resources, Division of Health Services.~~ The accounting of expenditures for the fourth quarter shall be due no later than 5 p.m. on June 15. Such accounting s shall include an itemized account of expenditures of both local and state funds, as well as an itemized account of other assets and facilities that have been utilized to carry out the mosquito control program. Such other supporting documents as may be required by the Department of ~~Human Resources, Division of Health Services,~~ shall be included in the accounting.

*Statutory Authority G.S. 130A-347.*

**.0209 AUTHORIZED CHANGES IN ALLOCATIONS**

(c) If any state aid allocated to a local program has not been claimed by the local program by June 15 of the fiscal year, the Department may automatically remove the funds from the local program's budget.

*Statutory Authority G.S. 130A-347.*

**SUBCHAPTER 10D - WATER SUPPLIES**

**SECTION .1600 - WATER QUALITY STANDARDS**

**.1615 MAXIMUM CONTAMINANT LEVELS FOR ORGANIC CHEMICALS**

The following are the maximum contaminant levels for organic chemicals. The maximum contaminant levels for organic chemicals in (1) and (2) of this Rule apply to all community water systems. Compliance with the maximum contaminant levels in (1) and (2) is calculated pursuant to 10 NCAC 10D .1624. The maximum contaminant level for total trihalomethanes in (3) of this Rule applies ~~only to all~~ only to all community water systems ~~and non-transient, non-community water systems which serve a population of 10,000 or more individuals and which~~ and non-transient, non-community water systems ~~add a disinfectant (oxidant) to the water in any part of the drinking water treatment process.~~ Compliance with the maximum contaminant level for total trihalomethanes is calculated pursuant to 10 NCAC 10D .1635.

Level, milligrams  
per liter

- |  |        |
|--|--------|
| (1) Chlorinated hydrocarbons:  |        |
| Endrin (1,2,3,4,10, 10-hexachloro-6,7-epoxy-1,4, 4a,5,6,7,8,8a-octa-hydro-1,4-endo, endo-5,8 - dimethano naphthalene). | 0.0002 |
| Lindane (1,2,3,4,5, 6-hexachloro-cyclohexane, gamma isomer).   | 0.004  |
| Methoxychlor (1,1, 1-Trichloro-2,2 - bis (p-methoxy-phenyl) ethane).   | 0.1    |
| Toxaphene [C(10)H (10)Cl(8) Technical chlorinated camphene, 67-69 percent chlorine].                                   | 0.005  |
| (2) Chlorophenoxys:  |        |
| 2,4,D, (2,4-Dichloro-phenoxyacetic acid).  | 0.1    |
| 2,4,5-TP Silvex (2,4,5-Trichloro-phenoxypropionic acid).   | 0.01   |
| (3) Total trihalomethanes [the sum of the concentrations of bromodichloromethane, dibromochloromethane,                |        |

tribromomethane 0.10  
(bromoform) and trichloromethane  
(chloroform)].

*Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.*

**.1635 TOTAL TRIHALOMETHANES  
SAMPLING AND ANALYSIS**

(a) Community water systems ~~which serve a population of 10,000 or more individuals~~ and non-transient, non-community water systems which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process shall analyze for total trihalomethanes (TTHMs) in accordance with this Rule. For systems serving 75,000 or more individuals, sampling and analyses shall begin not later than November 29, 1980. For systems serving 10,000 to 74,999 individuals, sampling and analyses shall begin not later than November 29, 1982. For systems serving less than 10,000 individuals, sampling and analysis shall begin not later than the quarter beginning January 1, 1992. For the purpose of this Rule, the minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with Department approval, be considered one treatment plant for determining the minimum number of samples. All samples taken within an established frequency shall be collected within a 24 hour period.

(b) For all community water systems and non-transient, non-community water systems utilizing surface water sources in whole or in part, and for all community water systems and non-transient, non-community systems utilizing only ground water sources that have not been determined by the Department to qualify for the monitoring requirements of (c) of this Rule, analyses for TTHMs shall be made as follows:

- (1) Analyses shall be performed at quarterly intervals on at least four water samples for each treatment plant used by the system. At least 25 percent of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75 percent shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the Department within 30

days of the system's receipt of such results. All samples collected shall be used in the computation of the average, unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in (e) of this Rule.

- (2) Upon the written request of a ~~community~~ water system, the monitoring frequency required by (b)(1) of this Rule may be reduced by the Department to a minimum of one sample analyzed for TTHMs per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system, upon a written determination by the Department that the data from at least one year of monitoring in accordance with (b)(1) of this Rule and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.
- (3) If at any time during which the reduced monitoring frequency prescribed under this Paragraph applies, the results from any analysis exceed 0.10 mg/l of TTHMs and such results are confirmed by at least one check sample taken promptly after such results are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of (b)(1) of this Rule, which monitoring shall continue for at least one year before the frequency may be reduced again. At the option of the Department, a system's monitoring frequency may and should be increased above the minimum in those cases where it is necessary to detect variations of TTHM levels within the distribution system.

(c) Upon written request to the Department, a community water system or a non-transient, non-community water system utilizing only ground water sources may seek to have the monitoring frequency required by (b)(1) of this Rule reduced as follows:

- (1) There shall be a minimum of one sample for maximum TTHM potential per year for each treatment plant used by the system taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit to the Department the results of at least one sample analyzed for maximum TTHM potential for each treatment plant used by the system taken at a point

in the distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the Department that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 mg/l and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for total TTHMs. The results of all analyses shall be reported to the Department within 30 days of the system's receipt of such results. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of (b) of this Rule, unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in (e) of this Rule.

- (2) If at any time during which the reduced monitoring frequency prescribed under (c)(1) of this Rule applies, the results from any analysis taken by the system for maximum TTHM potential are equal to or greater than 0.10 mg/l, and such results are confirmed by at least one check sample taken promptly after such results are received, the system shall immediately begin monitoring in accordance with the requirements of (b) of this Rule and such monitoring shall continue for at least one year before the frequency may be reduced again. In the event of any significant change to the system's raw water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting maximum residence time of the water in the system for the purpose of determining whether the system must comply with the monitoring requirements of (b) of this Rule. At the option of the Department, monitoring frequencies may and should be increased above the minimum in those cases where this is necessary to detect variation of TTHM levels within the distribution system.

(d) Compliance with 10 NCAC 10D .1615(3) shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in (b)(1) or (2) of this Rule. If the average of samples covering any 12 month period exceeds the maximum contaminant level,

the supplier of water shall report to the Department pursuant to 10 NCAC 10D .1631 and notify the public pursuant to 10 NCAC 10D .1633. Monitoring after public notification shall be at a frequency designated by the Department and shall continue until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(e) Sampling and analyses made pursuant to this Section shall be conducted by one of the following EPA approved methods:

- (1) "The Analysis of Trihalomethanes in Drinking Waters by the Purge and Trap Method," Method 501.1, Environmental Monitoring and Support Laboratory, EPA Cincinnati, Ohio.
- (2) "The Analysis of Trihalomethanes in Drinking Water by Liquid Liquid Extraction," Method 501.2, Environmental Monitoring and Support Laboratory, EPA Cincinnati, Ohio.

Samples for TTHM shall be dechlorinated upon collection to prevent further production of trihalomethanes, according to the procedures described in the methods in (1) and (2) of this Subparagraph. Samples for maximum TTHM potential should not be dechlorinated, and should be held for seven days at 25° C or above prior to analysis, according to the procedures described in the methods in (1) and (2) of this Subparagraph.

(f) Before a community water system or a non-transient, non-community water system makes any significant modifications to its existing treatment process for the purposes of achieving compliance with 10 NCAC 10D .1615(3), such system must submit and obtain Department approval of a detailed plan setting forth its proposed modification and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modification. Each system shall comply with the provisions set forth in the Department approved plan. At a minimum, a Department approved plan shall require the system modifying its disinfection practice to:

- (1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality;
- (2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished water quality throughout the distribution system;
- (3) Provide baseline water quality survey data of the distribution system. Such data should include the results from monitor-

ing for coliform and fecal coliform bacteria, fecal streptococci, standard plate counts at 35° C and 20° C, phosphate, ammonia nitrogen and total organic carbon. Virus studies should be required where source waters are heavily contaminated with sewage effluent;

- (4) Conduct additional monitoring to assure continued maintenance of optimal biological quality in finished water, for example, when chloramines are introduced as disinfectants or when pre-chlorination is being discontinued. Additional monitoring should also be required by the Department for chlorate, chlorite and chlorine dioxide when chlorine dioxide is used as a disinfectant. Standard plate count analyses should also be required by the Department as appropriate before and after any modifications;
- (5) Consider inclusion in the plan of provisions to maintain an active disinfectant residual throughout the distribution system at all times during and after the modification.

(g) The maximum contaminant levels for trihalomethanes set forth in 10 NCAC 10D .1615 shall take effect November 29, 1981 for community water systems serving 75,000 or more individuals, and November 29, 1983 for community water systems serving 10,000 to 74,999 individuals. The maximum contaminant levels for trihalomethanes set forth in 10 NCAC 10D .1615 for a community water system or a non-transient, non-community water system serving less than 10,000 shall take effect one year from the date that the system begins quarterly sampling.

*Authority G.S. 130A-315; P.L. 93-523; 40 CFR 141.*

#### .1637 TREATMENT TECHNIQUES FOR TOTAL TRIHALOMETHANES

(b) A community water system or a non-transient, non-community water system shall install and or use any treatment method identified in Paragraph (a) of this Rule as a condition for granting a variance unless the Secretary determines that such treatment method is not available and effective for TTHM control for the system. A treatment method shall not be considered to be "available and effective" for an individual system if the treatment method would not be technically appropriate and technically feasible for that system or would only result in a marginal reduction in TTHM for the system. If upon application by a system for a variance, the Secretary determines that none of the treatment

methods identified in Paragraph (a) of this Rule is available and effective for the system, that system shall be entitled to a variance under the provisions of 10 NCAC 10D .2500. The Secretary's determination as to the availability and effectiveness of such treatment methods shall be based upon studies by the system and other relevant information. If a system submits information intending to demonstrate that a treatment method is not available and effective for TTHM control for that system, the Secretary shall make a finding whether this information supports a decision that such treatment method is not available and effective for that system before requiring installation and or use of such treatment method.

*Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.*

#### .1638 SPECIAL MONITORING FOR ORGANIC CHEMICALS

(i) ~~A water supplier for a community water system or non-transient, non-community water system serving fewer than 150 service connections may comply with this Rule by sending a letter to the department stating that its system is available for sampling. The water supplier shall not send samples to the Department unless requested to do so by the Department. This letter shall be sent to the state no later than January 1, 1991.~~

(i) ~~(i)~~ All community and non-transient, non-community water systems shall repeat the monitoring no less frequently than every five years from the dates specified in Paragraph (a) of this Rule.

(j) ~~(k)~~ The Department or a water supplier may composite up to five samples when monitoring for substances in (d) and (h) of this Rule.

*Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.*

#### SUBCHAPTER 10F - HAZARDOUS WASTE MANAGEMENT

##### .0001 GENERAL

(a) The purpose of this Subchapter is to establish minimum State standards for hazardous waste management applicable to generators, transporters, owners, and operators of facilities which treat, store, incinerate or dispose hazardous waste.

(b) The Hazardous Waste ~~Branch~~ Section of the ~~Division of Health Services~~ Solid Waste Management Division shall administer the hazardous waste management program for the State of North Carolina.

(c) 40 CFR 260.1 to 260.3 (Subpart A), "General," has been adopted by reference in accordance with G.S. 150B-14(c).

(d) Copies of all material adopted by reference in this Subchapter may be inspected in the ~~Branch~~ Section Office, 401 Oberlin Road, P.O. Box ~~2091~~, 27687, Raleigh, N.C. ~~27602~~, 27611. Copies may be obtained from the ~~Branch~~ Section at the actual cost to the ~~Branch~~ Section.

(e) The "References" contained in 40 CFR 260.11 have been adopted by reference in accordance with G.S. 150B-14(c).

(f) This Rule shall apply throughout this Subchapter except that:

- (1) "Department of Environment, Health, and Natural Resources" shall be substituted for "Environmental Protection Agency" and "Secretary of the Department of Environment, Health, and Natural Resources" shall be substituted for "Administrator", "Regional Administrator" and "Director", except in those situations where authority has not been delegated to the State of North Carolina (e.g., international shipments) or unless the context requires a different meaning.
- (2) "Section" shall be the Hazardous Waste Section in the Solid Waste Management Division.
- (3) The "Department" shall be the Department of Environment, Health, and Natural Resources (DEHNR).
- (4) "Division" shall be the Solid Waste Management Division (SWMD).

Statutory Authority G.S. 130A-294(c).

#### .0002 DEFINITIONS

(a) The definitions contained in 40 CFR 260.10 (Subpart B), 40 CFR 270.2) and 40 CFR 124.2 have been adopted by reference in accordance with G.S. 150B-14(c).

(b) This Rule shall apply throughout this Subchapter except that:

- (1) "Department of Human Resources" shall be substituted for "Environmental Protection Agency" and "Secretary of the Department of Human Resources" shall be substituted for "Administrator", "Regional Administrator" and "Director", except in those situations where authority has not been delegated to the State of North Carolina (e.g. international shipments) or unless the context requires a different meaning.

- (1) ~~(2)~~ 40 CFR 124.2(c) shall not be adopted by reference.

- (2) ~~(3)~~ "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

- (4) ~~"Branch" shall be the Hazardous Waste Branch in the Solid Waste Management Section.~~

(c) The following definitions shall apply throughout this Subchapter:

- (1) "Hazardous waste disposal facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.
- (1) ~~(4)~~ "Comprehensive hazardous waste treatment facility" means a facility designated as such by the Governor's Waste Management Board, meeting the following criteria: it is a commercial facility that accepts hazardous waste from the general public for treatment; it has the capacity and capability to treat and dispose of hazardous waste on at least an intrastate, regional basis; and its location will substantially facilitate treatment of hazardous waste for the State of North Carolina.
- (2) "Hazardous waste long-term storage facility" means any facility or any portion of a facility constructed or utilized for storage of the residuals of the treatment of hazardous waste, on or in land.
- (3) "Long term retrievable storage" means storage in closed containers in facilities (either above or below ground) with:
  - (A) adequate lights;
  - (B) impervious cement floors;
  - (C) strong visible shelves or platforms;
  - (D) passageways to allow inspection at any time;
  - (E) adequate ventilation if underground or in closed buildings;
  - (F) protection from the weather;
  - (G) accessible to monitoring with signs on both individual containers and sections of storage facilities; and
  - (H) adequate safety and security precautions for facility personnel, inspectors and invited or permitted members of the community.
- (2) ~~(4)~~ "Re-use" means a process by which resources are reused or rendered usable.

Statutory Authority G.S. 130A-294(c).

**.0030 STANDARDS FOR HAZARDOUS WASTE GENERATORS - PART 262**

(e) The provisions for "Special Conditions" contained in 40 CFR 262.50 ~~and to~~ 262.58 (Subpart E) have been adopted by reference in accordance with G.S. 150B-14(c).

*Statutory Authority G.S. 130A-294(c).*

**.0032 STANDARDS FOR OWNERS/ OPERATORS OF HWMF'S - PART 264**

(i) "Financial Requirements" contained in 40 CFR 264.140 to 264.151 (Subpart II) have been adopted by reference in accordance with G.S. 150B-14(c), except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 264.151(a)(I), Section 15, ~~and 40 CFR 264.151(h)~~, are not adopted by reference. The remaining material in Paragraph (i) of this Rule is deleted.

The following shall be substituted for the provisions of 40 CFR 264.151(h) which are not adopted by reference.

(h) A corporate guarantee, as specified in Sections 264.143(f) or 264.145(f) or Sections 265.143(e) or 265.145(e) of this Chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE**

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the Department of Environment, Health, and Natural Resources (DEHNR), obligee, on behalf of our subsidiary [owner or operator] of [business address].

[Note: All requirements in this document referenced as 40 CFR 264 have been adopted in North Carolina as 10 NCAC 10F .0032, and all requirements referenced as 40 CFR 265 have been adopted in North Carolina as 10 NCAC 10F .0033.]

**Recitals**

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).
2. [Owner or operator] owns or operates the following hazardous waste management

facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Subpart G of 40 CFR Parts 264 and 265 for the closure and post-closure care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to DEHNR that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in Subpart H of 40 CFR Parts 264 and 265.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to DEHNR and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify DEHNR by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by DEHNR of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, in the name of



- [owner or operator] unless [owner or operator] has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR Parts 264 or 265.
  9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of Subpart II of 40 CFR Parts 264 and 265 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to DEHNR and to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by both DEHNR and [owner or operator], as evidenced by the return receipts.
  10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Subpart II of 40 CFR Parts 264 or 265, as applicable, and obtain written approval of such assurance from DEHNR within 90 days after a notice of cancellation by the guarantor is received by DEHNR from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].
  11. Guarantor expressly waives notice of acceptance of this guarantee by DEHNR or by [owner or operator]. Guarantor also expressly waives notice of amendments or modification of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in Section 264.151(h) of 10 NCAC 10F .0032(i) as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

- (1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) which were not adopted by reference:  
 "The owner or operator must deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this section."
- (2) The following shall be substituted for the provisions of 40 CFR 264.43(a)(4) which were not adopted by reference:  
 "Deleted"
- (3) The following shall be substituted for the provisions of 40 CFR 264.143(a)(5) which were not adopted by reference:  
 "Deleted"
- (4) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not adopted by reference:  
 "After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference."
- (5) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) which were not adopted by reference:  
 "The owner or operator must deposit the full amount of the post-closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a post-closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or shall obtain other financial assurance as specified in this section."

(6) The following shall be substituted for the provisions of 40 CFR 264.145(a)(4) which were not adopted by reference:  
"Deleted"

(7) The following shall be substituted for the provisions of 40 CFR 264.145(a)(5) which were not adopted by reference:  
"Deleted"

(8) The following shall be substituted for the provisions of 40 CFR 264.145(a)(6) which were not adopted by reference:

"After the trust fund is established, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference."

(9) The following shall be substituted for the provisions of 40 CFR 264.151(a)(1), Section 15, which were not adopted by reference:

"Section 15. Notice of Payment. The trustee shall notify the EPA Regional Administrator Secretary of Department of Environment, Health, and Natural Resources of payment to the trust fund, by certified mail within ten days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund."

(10) Section 264.144 is amended by adding a new paragraph (h) to read as follows:

"(h) 'Branch' means the Solid and Hazardous Waste Management Branch of the North Carolina Department of Human Resources."

(11) The following shall be substituted for the provisions of 40 CFR 264.147(a), which was not adopted by reference:

"Section 264.147 Liability requirements:

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental

occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph:

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in Section 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Branch. If requested by the Branch, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (h) of this Section.

(3) Liability trust fund:

(i) An owner or operator may demonstrate the required liability coverage by establishing a sudden accidental occurrences liability trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the Branch at

least 60 days before the date of which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(ii) The wording of the trust agreement must be identical to the wording specified in Section 261.151(k)(1), and the trust agreement must be accompanied by a formal certification of acknowledgement [for example, see Section 261.151(k)(2)].

(iii) On the date of the initial establishment of the sudden accidental occurrences liability trust fund, the value of the fund shall be at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 261.147(c) or (d).

(iv) If an owner or operator substitutes other financial assurance for liability coverage as specified in this Section for all or part of the sudden accidental occurrences liability trust fund, he may submit a written request to the Branch for release of the amount in the trust fund in excess of the amount of the required coverage to be demonstrated by the sudden accidental occurrences liability trust fund.

(v) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the sudden accidental occurrences liability trust fund in satisfaction of the judgment or settlement by submitting to the Trustee:

- a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or
- b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally

signed duplicate of the release of all claims.

(vi) After receiving the material described in Section 261.147(a)(3)(v) above, the Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(vii) No trust shall be terminated without prior written consent of the Branch. The Branch may agree to termination of the trust when it has determined that the owner or operator has substituted alternate financial assurance for liability coverage as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 261.115."

(12) Section 261.147(a) is amended by adding a new paragraph (4) to read as follows:

"(4) Surety bond guaranteeing payment into a sudden accidental occurrences liability trust fund:

(i) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to the requirements of this paragraph and by submitting the surety bond to the Branch. An owner or operator of a new facility must submit the bond to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of Treasury.

(ii) The wording of the surety bond must be identical to the wording specified in Section 261.151(1).

(iii) The owner or operator who uses a surety bond to satisfy the requirements of Section 261.147(a) shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the Branch, be deposited by the surety directly into the standby trust fund. This standby trust shall meet the requirements in Section 261.147(a)(3), except that:

- a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the surety bond; and

- b. Until the standby trust fund is funded pursuant to the requirements of Section 26-1-17 (a)(1)(viii), the following are not required: (i) payment into the trust fund as specified in Section 26-1-17(a)(3)(iii); (ii) annual valuations as required by the trust agreement [see 26-1-51(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 26-1-51(k)(1) Section 15].
- (iv) The bond shall guarantee that the owner or operator shall:
  - a. Fund the standby trust fund in an amount equal to either the sum of the judgment or settlement described in Section 26-1-17(a)(1)(vii) and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Branch or a court of competent jurisdiction issues an order to that effect; or
  - b. Provide alternate financial assurance for liability coverage as specified in this section, and obtain the branch's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Branch of a notice of cancellation of the surety bond from the surety.
- (v) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond.
- (vi) The penal sum of the bond shall be at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 26-1-17(e) or (f).
- (vii) If an owner or operator substitutes other financial assurance for liability coverage as specified in this section for all or part of the surety bond, he may submit a written request to the Branch for release of the amount of the penal sum of the bond in excess of the amount of the required coverage to be demonstrated by the surety bond.
- (viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment or settlement by submitting to the trustee:
  - a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or
  - b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.
- (ix) After receiving the material described in Section 26-1-17(a)(1)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the owner or operator to pay to the trustee such amounts, not to exceed the amount of the judgment or settlement, and the costs of administering said fund, or the amount of the required coverage, whichever is less. If the owner or operator fails to perform as required by the Branch's instructions, the Branch shall instruct the surety to place funds in the amount guaranteed for the facility(ies) into the standby trust fund. The trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.
- (x) Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and to the Branch. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of cancellation by both the owner or operator and the Branch, as shown by the latter return receipt.
- (xi) No bond shall be cancelled without prior written consent of the Branch.

The Branch may agree to cancellation of the bond when it has determined that the owner or operator has substituted alternate financial assurance for liability coverage as specified in this section, or when it approves the certification of closure of

the facility submitted pursuant to Section 261.115."

(1.3) Section 261.147(a) is amended by adding a new paragraph (5) to read as follows:

"(5) Letter of credit.

(i) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the Branch. An owner or operator of a new facility must submit the letter of credit to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(ii) The wording of the letter of credit shall be identical to the wording specified in Section 261.151(m).

(iii) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Branch, be deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in Section 261.147(a)(3), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of Section 261.147(a) (5)(ix), the following are not required: (1) payment into the trust fund as specified in Section 261.147(a)(3)(iii); (ii) annual valuations as required by the trust agreement [see 261.151(k)(1) Section 40] and (iii) notices of nonpayment as required by the trust agreement [see 261.151(k)(1); Section 45].

(iv) The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

a. The letter of credit number;

b. The name of the issuing institution;

c. The date of issuance of the letter of credit;

d. The EPA identification number(s) of the facility(ies);

e. The name(s) and address(es) of the facility(ies); and

f. The amount of funds assured by the letter of credit.

(v) The letter of credit shall be irrevocable and shall be issued for a period of at least one year unless at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the Branch by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days will begin on the date when both the owner or operator and the Branch have received the notice, as shown by the letter return receipt.

(vi) The letter of credit shall be issued in an amount at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 261.147(e) or (d).

(vii) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the amount of the letter of credit, he may submit a written request to the Branch for release of the amount of the letter of credit in excess of the amount of required coverage to be demonstrated by the letter of credit.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal; or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule; or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settle-

ment agreement and an originally signed duplicate of the release of all claims.

- (ix) After receiving the material described in Section 264-117(a) (5)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the institution issuing the letter of credit to pay to the Trustee such amount, not to exceed the amount of the judgment or settlement, and the costs of administering said fund, or the amount of the required coverage, whichever is less. The Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of fund in the trust.
- (x) If the owner or operator does not establish alternate financial assurance for liability coverage as required by this section and does not obtain written approval from the Branch of any such alternate financial assurance for liability coverage within ninety (90) days of receipt by both the owner or operator and by the Branch of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Branch shall draw on the letter of credit. The Branch may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Branch shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance for liability coverage as specified in this section or has failed to obtain written approval by the Branch of such assistance.
- (xi) No letter of credit shall be terminated without prior written consent of the Branch. The Branch may return the letter of credit to the issuing institution for termination when the Branch has determined that the owner or operator has substituted alternate financial assurance for liability coverage as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 264-115.
- (11) Section 264-117(a) is amended by adding a new paragraph (4) to read as follows:
- (12) Use of multiple financial mechanisms. An owner or operator may demonstrate the required liability coverage by establishing more than one financial mechanism as specified in this section. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (3), (4), and (5) of this section, except that it is the combination of the mechanisms, rather than the single mechanism, which must provide financial assurance for liability coverage for an amount at least two million dollars (\$2,000,000). If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Branch may use any and all of the mechanisms to provide for sudden accidental occurrences liability coverage for the facility."

- (13) The following shall be substituted for the provisions of 40 C.F.R. 264.117(b), which was not adopted by reference:
- "(b) Coverage for non-sudden accidental occurrences. An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for non-sudden accidental occurrences in the amount of at least \$2 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section.
- (1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.
- (2) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 264-151(f). The wording of the certificate of insurance must be identical to the wording specified in Section 264-151(j). The owner or operator must

submit a signed duplicate original of the endorsement or the certificate of insurance to the Branch. If requested by the Branch, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

- (ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.
- (2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (h) of this section.
- (3) Liability trust fund.
  - (i) An owner or operator may demonstrate the required liability coverage by establishing a nonsudden accidental occurrences liability trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.
  - (ii) The wording of the trust agreement must be identical to the wording specified in Section 264.114(k)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment [for example, see Section 264.114 (k)(2)].
  - (iii) On the date of the initial establishment of the nonsudden accidental occurrences liability trust fund, the value of the fund shall be at least six million dollars (\$6,000,000), or such other amount as required by the Branch pursuant to Section 264.117(c) or (d).
  - (iv) If an owner or operator substitutes other financial assurance for liability coverage as specified in this section for all or part of the nonsudden accidental occur-

rences liability trust fund, he may submit a written request to the Branch for release of the amount in the trust fund in excess of the amount of the required coverage to be demonstrated by the nonsudden accidental occurrences liability trust fund.

- (v) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the nonsudden accidental occurrences liability trust fund in satisfaction of the judgment or settlement by submitting to the Trustee:
  - a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or
  - b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

- (vi) After receiving the material described in Section 264.117(b)(3)(v) above, the Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.
- (vii) No trust shall be terminated without prior written consent of the Branch. The Branch may agree to termination of the trust when it has determined that the owner or operator has substituted alternate financial assurance for liability coverage as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 264.115."

- (16) Section 264.117(b) is amended by adding a new paragraph (4) to read as follows:
  - "(4) Surety bond guaranteeing payment into a nonsudden accidental occurrences liability trust fund.



- (i) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to the requirements of this paragraph and by submitting the surety bond to the Branch. An owner or operator of a new facility must submit the bond to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of Treasury.
- (ii) The wording of the surety bond must be identical to the wording specified in Section 261.151(1).
- (iii) The owner or operator who uses a surety bond to satisfy the requirements of Section 261.117(b) shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the branch be deposited by the surety directly into the standby trust fund. This standby trust shall meet the requirements in Section 261.117(b)(3), except that:
  - a. An originally signed duplicate of the trust agreement shall be submitted to the branch with the surety bond; and
  - b. Until the standby trust fund is funded pursuant to the requirements of Section 261.117(b)(1)(iv), the following are not required: (i) payment into the trust fund as specified in Section 261.117(b)(3)(iii); (ii) annual valuations as required by the trust agreement [see 261.151 (d)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 261.151(k) (1) Section 15].
- (iv) The bond shall guarantee that the owner or operator shall:
  - a. Fund the standby trust fund in an amount equal to either the sum of the judgment or settlement described in Section 261.117(b) (1)(vii) and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Branch or a court of competent jurisdiction issues an order to that effect; or
  - b. Provide alternate financial assurance for liability coverage as specified in this section, and obtain the Branch written approval of the assurance provided:
    - within ninety (90) days after receipt by both the owner or operator and by the Branch of a notice of cancellation of the surety bond from the surety;
- (v) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond.
- (vi) The penal sum of the bond shall be at least six million dollars (\$6,000,000), or such other amount as required by the Branch pursuant to Section 261.117(c) or (d).
- (vii) If an owner or operator substitutes other financial assurance for liability coverage as specified in this section for all or part of the surety bond, he may submit a written request to the Branch for release of the amount of the penal sum of the bond in excess of the amount of the required coverage to be demonstrated by the surety bond.
- (viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment or settlement by submitting to the Trustee:
  - a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or
  - b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.
- (ix) After receiving the material described in Section 261.117(b) (1)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the owner or operator to pay to the trustee such amount, not to exceed the amount of the



judgment or settlement and the costs of administering said fund; or the amount of the required coverage, whichever is less. If the owner or operator fails to perform as required by the Branch's instructions, the Branch shall instruct the surety to place funds in the amount guaranteed for the facility(ies) into the standby trust fund. The trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

- (x) Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and to the Branch. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of cancellation by both the owner or operator and the Branch, as shown by the latter return receipt.
- (xi) No bond shall be cancelled without prior written consent of the Branch. The Branch may agree to cancellation of the bond when it has determined that the owner or operator has substituted alternate financial assurance for liability coverage as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 26-1-115."
- (17) Section 26-1-117(b) is amended by adding a new paragraph (5) to read as follows:
  - "(5) Letter of credit.
    - (i) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the Branch. An owner or operator of a new facility must submit the letter of credit to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State Agency.
    - (ii) The wording of the letter of credit shall be identical to the wording specified in Section 26-1-151(m).
    - (iii) An owner or operator who uses a letter of credit to satisfy the requirements of this

section shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Branch, be deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in Section 26-1-117(b)(3), except that:

- a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the letter of credit; and
- b. Until the standby trust fund is funded pursuant to the requirements of 26-1-117(b)(5)(ix), the following are not required: (i) payment into the trust fund as specified in Section 26-1-117(b)(3)(iii); (ii) annual valuations as required by the trust agreement [see 26-1-151(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 26-1-151(k)(1) Section 15].
- (iv) The letter of credit shall be accompanied by a letter from the owner or operator which shall state:
  - a. The letter of credit number;
  - b. The name of the issuing institution;
  - c. The date of issuance of the letter of credit;
  - d. The EPA identification number(s) of the facility(ies);
  - e. The name(s) and address(es) of the facility(ies); and
  - f. The amount of funds assured by the letter of credit.
- (v) The letter of credit shall be irrevocable and shall be issued for a period of at least one year unless at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the Branch by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days will begin on the date when both the owner or operator and the Branch have received the notice, as shown by the latter return receipt.
- (vi) The letter of credit shall be issued in an amount at least six million dollars (\$6,000,000), or such other amount as required by the Branch pursuant to Section 26-1-117(c) or (d).
- (vii) If an owner or operator substitutes other financial assurance for liability coverage as specified in this section for all or part of the amount of the letter of

credit, he may submit a written request to the Branch for release of the amount of the letter of credit in excess of the amount of required coverage to be demonstrated by the letter of credit.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a non-sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal; or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule; or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 26-117(b)(5)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the institution issuing the letter of credit to pay to the Trustee such amount, not to exceed the amount of the judgment or settlement and the costs of administering said fund, or the amount of the required coverage, whichever is less. The Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of funds in the trust.

(x) If the owner or operator does not establish alternate financial assurance for liability coverage as required by this section and does not obtain written approval from the Branch of any such alternate financial assurance for liability coverage within ninety (90) days of receipt by both the owner or operator and by the Branch of a notice that the issuing insti-

tution will not extend the letter of credit beyond the current expiration date, the Branch shall draw on the letter of credit. The Branch may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Branch shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance for liability coverage as specified in this section or has failed to obtain written approval by the Branch of such assurance.

(xi) No letter of credit shall be terminated without prior written consent of the Branch. The Branch may return the letter of credit to the issuing institution for termination when the Branch has determined that the owner or operator has substituted alternate financial assurance for liability coverage as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 26-115."

(18) Section 26-117(b) is amended by adding a new paragraph (6) to read as follows:

"(6) Use of multiple financial mechanisms. An owner or operator may demonstrate the required liability coverage by establishing more than one financial mechanism as specified in this section. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (3), (4), and (5) of this section, except that it is the combination of the mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least six million dollars (\$6,000,000). If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Branch may use any and all of the mechanisms to provide for non-sudden accidental occurrences liability coverage for the facility."

(19) Section 26-117 is amended by adding a new paragraph (4) to read as follows:

"(4) Corporate guarantee for liability coverage.

(1) Subject to subparagraph (2), an owner or operator may meet the requirements

of this section by obtaining a written guarantee hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator as defined in Section 264.140(d). The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (7) of this Section. The wording of the corporate guarantee must be identical to the wording specified in Section 264.151(n). A certified copy of the corporate guarantee must accompany the items sent to the Branch as specified in paragraph (f)(3) of this Section. The terms of the corporate guarantee must provide that:

- (i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury and/or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both, as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to rise from such injury or damage, the guarantor will do so up to the limits of coverage.
- (ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Branch. This guarantee may not be terminated unless and until the Branch approves alternate liability coverage complying with Section 264.147 and/or 265.147.
- (2) A Corporate guarantee may be used to satisfy the requirements of this section only if the attorney general or insurance commissioner of the state in which the guarantor is incorporated and of this state when a facility covered by the guarantee is located in North Carolina, has submitted a written statement to the Branch that a corporate guarantee executed as described in this section and Section 264.151(n) is a legally valid and enforceable obligation in that state."

- (20) Section 264.147 is amended by adding a new paragraph (i) to read as follows:

"(i) Notice of claim. The owner or operator of each facility shall give written notice to the Branch of every claim for bodily injury and/or property damage caused by a sudden and/or nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such

notice to the Branch as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall give written notice to the branch of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden or nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to the Branch as soon as possible and in any event no later than thirty (30) days after learning of said judgment. The owner or operator of each facility shall submit to the branch a copy of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden and/or nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall submit a copy of such judgment to the Branch as soon as possible and in any event no later than thirty (30) days after receiving a copy thereof."

- (21) Section 264.147 is amended by adding a new paragraph (j) to read as follows:

"(j) continuous coverage. An owner or operator must continuously provide liability coverage for a facility as required by this section until notified that he is no longer required to maintain liability coverage for that facility in accordance with Section 264.147(e). If the owner or operator fails to submit evidence of liability coverage as required by Section 264.147 and to obtain from the Branch approval of such coverage before the expiration of the current liability coverage, the owner or operator shall cease treatment, storage, or disposal of hazardous waste at the facility until liability coverage is demonstrated to and approved by the Branch."

*Statutory Authority G.S. 130A-294(c).*

#### .0034 INTERIM STATUS STANDARDS FOR PERMITTING - PART 270

(b) The following provisions for additional permitting requirements contained in 40 CFR 270 (Subpart B, Permit Application) have been adopted by reference in accordance with G.S. 150B-14(c).

- (1) 40 CFR 270.10, General Application Requirements;
- (2) 40 CFR 270.11, Signatories to Permit Applications and Reports;

- (3) 40 CFR 270.12, Confidentiality of Information;
- (4) 40 CFR 270.13, Contents of Part A of the Permit Applications;
- (5) 40 CFR 270.14, Contents of Part B General Requirements;
- (6) 40 CFR 270.15, Specific Part B Information Requirements for Containers;
- (7) 40 CFR 270.16, Specific Part B Information Requirements for Tanks;
- (8) 40 CFR 270.17, Specific Part B Information Requirements for Surface Impoundments;
- (9) 40 CFR 270.18, Specific Part B Information Requirements for Waste Piles;
- (10) 40 CFR 270.19, Specific Part B Information Requirements for Incinerators;
- (11) 40 CFR 270.20, Specific Part B Information Requirements for Landfill Land Treatment Facilities.
- (12) 40 CFR 270.21, Specific Part B Information Requirements for Land Treatment Facilities Landfill.
- (13) 40 CFR 270.23 Specific Part B information requirements for miscellaneous units;
- (14) 40 CFR 270.29 Permit Denial;
- (15) The following are additional specific Part B information requirements for all treatment, storage or disposal facilities:
  - (A) A description and documentation of the public meetings as required in 10 NCAC 10F .0032(q)(7);
  - (B) A description of the hydrological and geological properties of the site including, as a minimum, flood plains, depth to water table, ground water travel time, seasonal and longterm groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics and composition and permeability, existence of cavernous bedrock and seismic activity, slope, mines, climate, location and withdrawal rates of surface water users within the immediate drainage basin and well water users within a one mile radius of the facility; water quality information of both surface and groundwater within 1000 ft. of the facility, and a description of the local air quality;
  - (C) A description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;
  - (D) A description of local land use including residential, industrial, commercial, recreational, agricultural and the proximity to schools and airports;
  - (E) A description of the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route, and route safety. Comments should include proposed alternative routes and restrictions necessary to protect the public health;
  - (F) A description of facility aesthetic factors including visibility, appearance, and noise level;
  - (G) A description of any other objective factors that the Department of ~~Human Resources~~ Environment, Health, and Natural Resources determines are reasonably related and relevant to the proper siting and operation of the facility;
- (16) The following are additional specific Part B information requirements for ~~comprehensive hazardous waste treatment disposal~~ facilities:
  - (A) A description of the local zoning surrounding the facility;
  - (B) A description of the buffer zones surrounding the facility;
  - (C) A description of the availability of utilities to the facility;
  - (D) A description of the availability of civil defense services to the facility;
  - (E) A description of the fire safety of the facility;
  - (F) A description of access into the facility, and the existing and proposed road network around the facility;
  - (G) The distance from the facility to the nearest polychlorinated biphenyl landfill facility and hazardous waste landfill facility;
  - (H) A description of the procedures that will be employed to ensure that hazardous waste shall not be stored for over 90 days prior to treatment or disposal;
  - (I) A description of any other objective factors that the Department of ~~Human Resources~~ Environment, Health, and Natural Resources determines are reasonably related and relevant to the proper siting and operation of the facility;
- (17) The following are additional Specific Part B Information Requirements for ~~Long-Term Retrievable Storage, Long-Term Storage Facilities, or Hazardous Waste Landfills~~ Disposal Facilities:

(A) The owners and operators must provide the following information about the waste and underground storage of either a hazardous waste ~~landfill or long-term storage disposal facility~~:

- (i) Design drawings and specifications of the leachate collection and removal system;
- (ii) Design drawings and specifications of the artificial impervious liner;
- (iii) Design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner;

(iv) A description of how hazardous wastes will be treated prior to placement in the facility as required in 10 NCAC 10F .0032(o)(2)(B).

~~(B) Long-term retrievable storage facilities must provide design drawings and specifications of the lighting, cement floors, shelves, platforms, inspection passageways, ventilation system, monitoring system, and safety and security precautions, and a description of how wastes will be protected from the weather and where waste identification will be placed;~~

(18) The following are additional Specific Part B Information requirements for Surface Impoundments:

- (A) Design drawings and specifications of the leachate collection and removal system;
- (B) Design drawings and specifications of all artificial impervious liners;
- (C) Design drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner;
- (D) Design drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.

*Statutory Authority G.S. 130A-294(c); 130A-295(a)(1) and (2).*

#### .0039 RECYCLABLE MATERIALS - PART 266

(a) The ~~following~~ provisions for recyclable materials used in a manner constituting disposal contained in 40 CFR 266.20 to 266.23 (Subpart C) have been adopted by reference in accordance with G.S. 150B-14(c).

(b) The ~~following~~ provisions for "Hazardous Waste Burned for Energy Recovery" contained in 40 CFR 266.30 to 266.36 (Subpart D) have been adopted by reference in accordance with G.S. 150B-14(c).

(c) The ~~following~~ provision for "Used Oil Burned for Energy Recovery" contained in 40 CFR 266.40 to 266.44 (Subpart E) have been adopted by reference in accordance with G.S. 150B-14(c).

(d) The ~~following~~ provision for Recyclable Materials Utilized for Precious Metal Recovery contained in 40 CFR 266.70 (Subpart F) have been adopted by reference in accordance with G.S. 150B-14(c).

(e) The ~~following~~ provisions for Spent Lead-Acid Batteries being reclaimed contained in 40 CFR 266.80 (Subpart G) have been adopted by reference in accordance with G.S. 150B-14(c).

*Statutory Authority G.S. 130A-294(c).*

#### .0040 PUBLIC INFORMATION - PART 2

(a) The ~~following provision~~ provisions concerning requests for information in 40 CFR 2.100 to 2.120 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c), except that 40 CFR 2.100 (a) is not adopted by reference.

(1) The following shall be substituted for the provisions of 40 CFR 2.100 (a) which are not adopted by reference:

(2) Definitions.

(A) "EPA" means the United States Environmental Protection Agency.

(B) "Department of Environment, Health, and Natural Resources" shall be substituted for "Environmental Protection Agency" and "Hazardous Waste Section Chief in the Solid Waste Management Division of the Department of Environment, Health, and Natural Resources" shall be substituted for "Administrator", "Regional Administrator" and "Director", except in those situations where authority has not been delegated to the State of N.C. or unless the context requires a different meaning.

(C) "Section" means the N.C. Hazardous Waste Section, in the Division of Solid Waste Management, Department of Environment, Health, and Natural Resources.

(D) "Section Officer" means the person designated by the Section Chief to this activity.

(E) "Section Attorney" means the person designated by the Section Chief to do this activity.

(F) Section Officer shall be substituted for the freedom of information officer.

(G) "N.C. Hazardous Waste Section Public Affairs Director" shall be substituted for

the EPA Director of the Office of Public Affairs.

(II) "N.C. Hazardous Waste Section Office" shall be substituted for Regional EPA Office or EPA Branch Office.

(I) "Department" means N.C. Department of Environment, Health, and Natural Resources.

(J) "Section Employee" shall be substituted for EPA Employee.

(K) "Section Legal Office" shall be the Section Attorney.

(b) The following provision provisions concerning confidentiality of business information in 40 CFR 2.201 to 2.309 (Subpart B) have been adopted by reference in accordance with G.S. 150B-14(c), except that 40 CFR 2.209 (b) and (c), 2.301, 2.302, 2.303, 2.304, 2.306, 2.307, 2.308 and 2.309 are not adopted by reference.

*Statutory Authority G.S. 130A-294(c).*

#### .0042 LAND DISPOSAL RESTRICTIONS - PART 268

(a) The "General" provisions contained in 40 CFR 268.1 to 268.13 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c).

(b) The "Prohibitions on Land Disposal" provisions contained in 40 CFR 268.30 to ~~268.33~~ 268.34 (Subpart C) have been adopted by reference in accordance with G.S. 150B-14(c).

(c) The "Treatment Standards" provisions contained in 40 CFR 268.40 to 268.44 (Subpart D) have been adopted by reference in accordance with G.S. 150B-14(c).

(d) The "Prohibitions on Storage" provisions contained in 40 CFR 268.50 (Subpart E) have been adopted by reference in accordance with G.S. 150B-14(c).

(e) Appendices I and to III contained in 40 CFR 268 have been adopted by reference in accordance with G.S. 150B-14(c).

*Statutory Authority G.S. 130A-294(c).*

#### SUBCHAPTER 10G - SOLID WASTE MANAGEMENT

##### SECTION .0900 - SEPTAGE MANAGEMENT

##### .0902 DEFINITIONS

The following definitions shall apply throughout this Section:

(1) "Department" means the Department of Human Resources, Department of Environment, Health, and Natural Resources;

(2) "Septage" means septage as defined in G.S. 130A-290(16a);

(2) "Place of business" means any store, warehouse, manufacturing establishment, place of amusement or recreation, service station, food handling establishment, or any other place where people work or are served.

(3) "Place of public assembly" means any fairground, auditorium, stadium, church, campground, theater, school, or any other place where people gather or congregate.

(4) "Residence" means any home, hotel, motel, summer camp, labor work camp, mobile home, dwelling unit in a multiple-family structure, or any other place where people reside.

(5) "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including bedrock or weathered rock, not exhibiting the properties of soil.

(6) "Septage" means a waste that is a fluid mixture of untreated and partially treated sewage solids, liquids and sludge of human or domestic origin which is removed from a septic tank system.

(7) ~~(3)~~ "Septage management firm" means septage management firm as defined in G.S. 130A-290(16b).

(8) "Soil" means the unconsolidated mineral and organic material of the land surface. It consists of sand, silt, and clay minerals and variable amount of organic materials.

(9) "Soil textural classes" means soil classification based upon size distribution of mineral particles in the fine-earth fraction less than two millimeters in diameter. The fine-earth fraction includes sand (2.0 - 0.05 mm in size), silt (0.05 mm - 0.002 mm), and clay (less than 0.002 mm in size) particles. The specific textural classes are defined as follows:

(a) "Sand" means soil material that contains 85 percent or more of sand; the percentage of silt plus 1.5 times the percentage of clay shall not exceed 15;

(b) "Loamy sand" means soil material that contains at the upper limit 85 to 90 percent sand, and the percentage silt plus 1.5 times the percentage of clay is not less than 15; at the lower limit it contains not less than 70 to 85 percent sand, and the percentage of silt plus twice the percentage of clay does not exceed 30;

(c) "Sandy loam" means soil material that contains either 20 percent clay or less, and the percentage of silt plus twice the percentage of clay exceeds 30, and contains 52 percent or more sand; or less than 7 percent clay, less than 50 percent silt, and between 43 and 52 percent sand;

- (d) "Loam" means soil material that contains 7 to 27 percent clay, 28 to 50 percent silt, and less than 52 percent sand;
- (e) "Silt loam" means soil material that contains 50 percent or more silt and 12 to 27 percent clay; or contains 50 to 80 percent silt and less than 12 percent clay;
- (f) "Silt" means soil material that contains 80 percent or more silt and less than 12 percent clay;
- (g) "Sandy clay loam" means soil material that contains 20 to 35 percent clay, less than 28 percent silt, and 45 percent or more sand;
- (h) "Clay loam" means soil material that contains 27 to 40 percent clay and 20 to 45 percent sand;
- (i) "Silty clay loam" means soil material that contains 27 to 40 percent clay and less than 20 percent sand;
- (j) "Sandy clay" means soil material that contains 35 percent or more clay and 45 percent or more sand;
- (k) "Silty clay" means soil material that contains 40 percent or more clay and 40 percent or more silt;
- (l) "Clay" means soil material that contains 40 percent or more clay, less than 45 percent sand, and less than 40 percent silt.

*Statutory Authority G.S. 130A-291.1.*

#### **.0904 FEES**

Every septage management firms shall pay an annual fee by January 1 of each year in accordance with G.S. 130A-291.1(e). Fees shall be paid to the Septage Management Program, Branch, Solid Waste Branch, Section P.O. Box 2091, 27687, Raleigh, N.C. 27602, 27611-7687.

*Statutory Authority G.S. 130-291.1.*

#### **.0905 SEPTAGE DISPOSAL SITE PERMITS**

(a) No septage disposal site shall be used for the disposal of septage unless the site is permitted by the department.

(b) All septage disposal sites in operation on January 1, 1989 are deemed permitted until January 1, 1991, under the following conditions:

- (1) if a county has an ordinance that established standards for septage disposal sites, a site ~~must~~ shall meet those standards; and
- (2) this site is operated in such a manner that a public health hazard is not created.
- (3) To continue disposal of septage on a site on or after January 1, 1991, the owner or the person in control of the site ~~must~~ shall

have applied for and received a permit from the department.

(c) To commence disposal of septage on a site not in operation on January 1, 1989, the owner or the person in control of the site ~~must~~ shall have applied for and received a permit from the department.

(d) To apply for a permit for a septage disposal site, the owner or the person in control of the site shall submit the following information to the department:

- (1) the location of the site;
- (2) the name, address, and phone number of the owner or person in control of the site;
- (3) the size of the site;
- (4) the estimated annual application of septage in gallons;
- (5) the uses of the site for other than septage disposal;
- (6) the substances other than septage previously disposed of at this location, and the amounts of other substances;
- (7) the method of storage or disposal of septage during adverse weather conditions;
- (8) the method of incorporation, and any pretreatment methods, used for septage disposal;
- (9) the equipment used at the site;
- (10) a written report that documents compliance with Rules .0907 through .0911 of this Section; and
- (11) other pertinent information.

(e) If a special investigation shows that site management practices can be utilized to overcome the site restrictions in .0907 (a)(2)(B), a permit may be issued under the following conditions:

- (1) The site shall be maintained and operated in a manner which will protect the assigned water quality standards of the surface waters and ground waters;
- (2) Water table monitoring wells shall be installed, maintained and monitored by the site operator at locations approved by the Department. The well identification number, date of measurement sampling, and depth to the seasonally high water table shall be recorded in a monitoring well log. Minimum depths to the seasonally high water table, the monitoring sampling frequencies, or any other required data, will be specified on the Permit to Operate a Septage Disposal Site;
- (3) In the event that the water table monitoring program is not conducted according to the permit requirements, the operator shall cease applying septage to the site.



The operator will cease the application of septage if there is evidence of groundwater or surface water contamination.

(f) An annual septage loading rate (gallons per acre per year) will be specified by the Department. The nutrient and metal status of the soils, site hydraulic constraints, nutrient demand of the crop to be grown and the potential environmental impact of the operation will be considered when the annual loading rate is determined.

*Statutory Authority G.S. 130A-291.1.*

#### **.0907 LOCATION OF SEPTAGE DISPOSAL SITES**

(a) Sandy soils overlying an unconfined aquifer shall not be used for the disposal of septage unless a minimum of three feet of separation exists between the point of septage application and the naturally occurring seasonally high water table.

(b) Septage land application sites shall not be located in the watershed of a Class I or Class II reservoir or in the watershed of the portion of a Class WS-III stream extending from a Class I reservoir to a downstream intake at a water purification plant. This requirement becomes effective whenever funds have been appropriated either for purchase of land or construction of a Class I or Class II reservoir. This prohibition does not apply to those portions of a water supply reservoir watershed which are drained by Class C streams.

(a) Soil Characteristics (Morphology) - The soil characteristics which shall be evaluated are as follows:

(1) Texture - The relative proportions of the sand, silt, and clay-sized mineral particles in the fine-earth fraction of the soil are referred to as soil texture. The texture of the different horizons of soils shall be classified into three general groups and 12 soil textural classes based upon the relative proportions of sand, silt, and clay-sized mineral particles.

(A) SOIL GROUP I - SANDY TEXTURE SOILS: The sandy group includes the sand and loamy sand textural classes.

(B) SOIL GROUP II - COARSE LOAMY AND FINE LOAMY TEXTURE SOILS: The coarse loamy and fine loamy group includes sandy loam, loam, silt, silt loam, sandy clay loam, clay loam, and silty clay loam textural classes.

(C) SOIL GROUP III - CLAYEY TEXTURE SOILS: The clayey group includes sandy clay, silty clay, and clay textural classes.

(D) The soil textural class shall be determined in the field by hand texturing samples of each soil horizon in the soil profile using the following criteria:

(i) Sand: Sand has a gritty feel, does not stain the fingers, and does not form a ribbon or ball when wet or moist;

(ii) Loamy Sand: Loamy sand has a gritty feel, stains the fingers (silt and clay), forms a weak ball, and cannot be handled without breaking;

(iii) Sandy Loam: Sandy loam has a gritty feel and forms a ball that can be picked up with the fingers and handled with care without breaking;

(iv) Loam: Loam may have a slightly gritty feel but does not show a fingerprint and forms only short ribbons of from 0.25 inch to 0.50 inch in length. Loam will form a ball that can be handled without breaking;

(v) Silt Loam: Silt loam has a floury feel when when moist and will show a fingerprint but will not ribbon and forms only a weak ball;

(vi) Silt: Silt has a floury feel when moist and sticky when wet but will not ribbon and forms a ball that will tolerate some handling;

(vii) Sandy Clay Loam: Sandy clay loam has a gritty feel but contains enough clay to form a firm ball and may ribbon to form 0.75 inch to one-inch long pieces;

(viii) Silty Clay Loam: Silty clay loam is sticky when moist and will ribbon from one to two inches. Rubbing silty clay loam with the thumbnail produces a moderate sheen. Silty clay loam produces a distinct fingerprint;

(ix) Clay Loam: Clay loam is sticky when moist. Clay loam forms a thin ribbon of one to two inches in length and produces a slight sheen when rubbed with the thumbnail. Clay loam produces a nondistinct fingerprint;

(x) Sandy Clay: Sandy clay is plastic, gritty and sticky when moist and forms a firm ball and produces a thin ribbon to over two inches in length;

(xi) Silty Clay: Silty clay is both plastic and sticky when moist and lacks any gritty feeling. Silty clay forms a ball and readily ribbons to over two inches in length;

(xii) Clay: Clay is both sticky and plastic when moist, produces a thin ribbon over two inches in length, produces a



high sheen when rubbed with the thumbnail, and forms a strong ball resistant to breaking.

(E) Laboratory determination of the soil textural class as defined in these rules by particle-size analysis of the fine-earth fraction (less than

2.0 mm in size) using the sand, silt and clay particle sizes as defined in these rules may be substituted for field testing when conducted in accordance with ASTM (American Society for Testing and Materials) D-422 procedures for sieve and hydrometer analyses which are hereby adopted by reference in accordance with G.S. 150B-14(c). For fine loamy and clayey soils (Groups II and III) the dispersion time shall be increased to 12 hours. Copies may be inspected in and copies obtained from the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, P. O. Box 27611-7687, Raleigh, NC 27611-7687.

(2) Wetness Condition:

(A) Soil wetness conditions caused by a seasonal high-water table, perched water table, tidal water, or seasonally saturated soils shall be determined by observation of colors of chroma 2 or less (Munsell color chart) in mottles or a solid mass. If drainage modifications have been made, the soil wetness conditions may be determined by direct observation of the water surface during periods of typically high water elevations. However, colors of chroma 2 or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition.

(B) The required depth to a soil wetness condition is determined by the Soil Group Textural Classification.

(i) Soil Group I soils shall be considered suitable where soil wetness conditions are greater than 36 inches below the point of septage application or incorporation.

(ii) Soil Group II soils shall be considered suitable where soil wetness conditions are greater than 24 inches below the point of septage application or incorporation.

(iii) Soil Group III soils shall be considered suitable where soil wetness conditions are greater than 12 inches below the point of septage application or incorporation.

(C) Soils which do not meet the required depths to a soil wetness condition shall be considered unsuitable and septage shall not be applied, unless the required separation distances can be maintained. Water table monitoring wells may be utilized to determine the actual depth to a soil wetness condition.

(3) Depth to Rock: Soil depth shall be considered suitable where depth to rock is greater than 24 inches below the point of septage application or incorporation.

(b) Septage disposal sites shall not be located in the watershed of a Class I or Class II reservoir or in the watershed of the portion of any stream extending from a Class I reservoir to a downstream intake at a water purification plant. This prohibition does not apply to those portions of a water supply reservoir watershed which are drained by Class B or Class C streams. This requirement becomes effective whenever funds have been appropriated either for purchase of land or construction of a Class I or Class II reservoir.

(c) All septage disposal sites shall be located at least the minimum distance specified for the following:

- (1) private dwellings and individual potable water supply well, 500 feet;
- (2) community supply well, 500 feet;
- (3) waters classified WS-III, WS-IIIb, or SA, 500 feet; and
- (4) any other stream, canal, marsh, coastal water, lake or impoundment, 500 feet.

(d) No septage disposal site shall be located upslope of a potable water supply spring.

(1) Private residence, place of business, or place of public assembly, under separate ownership - 500 feet;

(2) Potable water supply well or potable water supply spring - 500 feet;

(3) Surface waters. Stream classification shall be determined in accordance with 15 NCAC 2B .0300-.0311 Assignment of Stream Classifications, which is hereby adopted by reference in accordance with G.S. 150B-14(c);

(A) Fresh waters:

(i) Class I, II, and III reservoirs as defined in 10 NCAC 10D .0700 - Protection of Private Water Supplies, which is hereby adopted by reference in accordance with G.S. 150B-14(c) - 500 feet;

(ii) Class WS-I, Class WS-II, or Class WS-III streams - 300 feet;

(iii) Class B stream - 300 feet;

(iv) Class C stream - 200 feet;

- (v) Other streams and bodies of water - 200 feet.
- (B) Tidal salt waters:
  - (i) Class SA or Class SB - 300 feet from mean high water mark;
  - (ii) Class SC and other coastal waters - 200 feet from mean high water mark.
- (C) Supplemental Classifications:
  - (i) Trout waters and swamp waters - 200 feet;
  - (ii) Nutrient sensitive waters and outstanding resource waters - 300 feet.
- (4) Groundwater lowering ditches and devices - 100 feet;
- (5) Adjoining property under separate ownership or control - 50 feet;
- (6) Public road right of ways - 100 feet.
- (d) All septage disposal sites, at the time of initial septage disposal site permit issuance, shall be located at least the minimum distances specified in Rule .0907(c)(1-5). The septage disposal site shall not be expanded to encroach upon the originally established minimum setback distances.
- (e) Septage disposal sites shall not be located where the slope of the land is greater than 12 percent.

*Statutory Authority G.S. 130A-291.1.*

#### **.0908 MANAGEMENT OF SEPTAGE DISPOSAL SITES**

Untreated septage shall be disposed of at a wastewater treatment plant, disked, plowed or otherwise incorporated in the soil, or treated by a means to reduce pathogens or further reduce pathogens within 24 hours of removal from a ground absorption sewage disposal system unless placed in a ~~temporary~~ septage detention system which is part of a ~~registered~~ permitted disposal site or method.

- (1) Each septage disposal site shall be posted with "NO TRESPASSING" signs. Access roads or paths crossing or leading to the disposal area shall be posted "NO TRESPASSING" and a legible sign of at least two feet by two feet stating "SEPTAGE DISPOSAL AREA" shall be maintained at each entrance to the disposal area.
- (2) Septage shall be applied in such a manner as to have no standing surface collection of liquid 24 hours after application.
- (3) No hazardous wastes shall be permitted on the site.
- (4) No industrial or solid wastes shall be deposited on the site without prior approval by the Department.

- (5) The pH of the soil-septage mixture shall be maintained at 6.5 or greater at all times.
- (6) The site will be managed in such a manner as to minimize soil erosion and surface water runoff. Appropriate soil and water management practices shall be implemented and maintained. All water control structures shall be designed, installed, and maintained to control the runoff resulting from a 10-year storm. A written management plan shall be prepared and submitted to the Department for review.
- (7) Records and reports will be maintained to show compliance with permit requirements and to assist in proper septage disposal. A log which records the date of pumping, gallons of septage pumped, and location of disposal site will be maintained for each pumping event.

*Statutory Authority G.S. 130A-291.1.*

#### **.0909 SEPTAGE DETENTION SYSTEMS**

All ~~land application systems~~ for septage disposal sites shall ~~have an alternate plan for~~ provide facilities or ~~have an alternate plan for~~ the detention or disposal of septage ~~during periods of adverse weather conditions~~ during periods when the approved disposal method is not available:

- (1) The use of a septage detention ~~systems~~ system at a permitted septage disposal site, shall be acceptable only as a temporary storage method during periods of adverse weather conditions;
- (2) Septage detention systems which are designed to store septage prior to ultimate disposal in a wastewater treatment plant are not a component of a septage disposal site and shall be located the minimum distance specified from the following:
  - (a) Private residence, place of business, or place of public assembly - 100 feet;
  - (b) Potable water supply well or potable water supply spring - 100 feet;
  - (c) Surface waters - 100 feet;
  - (d) Property lines - 25 feet.
- An enclosed storage system (steel or fiberglass tanks) shall be used. Septage shall be transferred to and from the storage system in a safe, sanitary manner that prevents leaks or spills of septage.
- (3) ~~(2)~~ Each septage detention system shall prevent the flow of septage out of the system and into the seasonally high water table, onto the ground surface or into any of the surface waters of the state;

- (4) ~~(3)~~ Septage management firms utilizing detention systems shall control odors from such systems; and
- (5) ~~(4)~~ Septage shall be removed from ~~the a detention detention system at the earliest favorable weather.~~ when an approved means of disposal is available.

Statutory Authority G.S. 130A-291.1.

#### .0912 TRANSPORTATION OF SEPTAGE

(a) All septage shall be transported in a safe, sanitary manner that prevents leaks or spills of septage.

(b) An approved septage management firm, possessing a valid septage management firm permit, shall display decals or lettering on each side of every pumper vehicle operated by the firm showing the name, address, phone number, and septage permit number of the septage management firm. All decals or lettering on the pumper vehicle shall be no less than three (3) inches in height and plainly visible. Identification shall be of a permanent nature (i.e., no removable signs).

Statutory Authority G.S. 130A-291.1.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Mental Retardation and Substance Abuse Services intends to adopt rule(s) cited as 10 NCAC 14A .1401 - .1403, .1501 - .1506, .1601 - .1609, .1701 - .1703, .1801 - .1813, .1901 - .1905, .2001 - .2007, .2101 - .2106, .2201 - .2207, .2301 - .2304, .2401 - .2403, .2501 - .2508, .2601 - .2612, .2701 - .2703, .2801 - .2804, .2901 - .2902, .3001 - .3004; amend rule(s) cited as 10 NCAC 18F .0115 - .0119, .0121 - .0122; 18M .1303; and repeal rule(s) cited as 10 NCAC 18F .0120.*

*The proposed effective dates of these actions are May 1, 1990 and July 1, 1990.*

*The public hearing will be conducted at 1:00 p.m. on February 15, 1990 at Multipurpose Room, Royster Building, Cherry Hospital, Goldsboro, N.C.*

*Comment Procedures: Any interested person may present his or her comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Marilyn Brothers, Division of Mental Health, Mental Retardation and Substance Abuse*

*Services, 325 N. Salisbury Street, Raleigh, NC 27611, (919) 733-4774 by February 15, 1990. The hearing record will remain open for written comments from January 16, 1990 through February 15, 1990. Written comments must be sent to the above address and must state the rule(s) to which the comments are addressed. Fiscal information on these rules is also available from the same address.*

## CHAPTER 14 - MENTAL HEALTH: GENERAL

### SUBCHAPTER 14A - IDENTIFYING INFORMATION

#### SECTION .1400 - PURPOSE, SCOPE, APPLICABILITY AND DEFINITIONS

##### .1401 SCOPE

This Subchapter sets forth standards for the delivery of mental health, mental retardation, and substance abuse services to inmates in the custody of the Department of Correction. These standards shall apply to such services provided to inmates by the Department or by any other provider of services on a contractual basis.

Statutory Authority G.S. 148(d)(19).

##### .1402 REQUIRED SERVICES

The Department shall provide or contract for comprehensive, quality mental health, mental retardation, and substance abuse services to inmates that compare acceptably with those available to free citizens in a cost effective manner. Such services shall include, but need not be limited to, emergency, prevention, case management, outpatient, residential, and inpatient services to meet the needs of inmates in need of such services.

Statutory Authority G.S. 148(d)(19).

##### .1403 DEFINITIONS

For the rules contained in this Subchapter, the following definitions apply:

- (i) "Active client" means an inmate who is receiving:
  - (a) mental health or substance abuse treatment and who:
    - (i) has a written plan of treatment, with specific goals and time frames;
    - (ii) is receiving treatment in accordance with the plan; and
    - (iii) has met face to face with a mental health staff member or other specifically trained staff member within the past 90 days.

- (b) developmental programming for a client who is mentally retarded which is initiated with the development of a habilitation plan.
- (2) "Administering medication" means direct application of a medication whether by injection, inhalation, ingestion, or any other means to a client.
- (3) "Admission" means acceptance of an inmate for mental health, mental retardation or substance abuse services in accordance with Department procedures.
- (4) "Alcohol abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of alcohol use that have never met the criteria for dependence for that particular class of substance.
- (5) "Area" means one of the six geographic catchment areas designated by the Department for administrative purposes.
- (6) "Area mental health, mental retardation, and substance abuse program" means a legally constituted public agency providing mental health, mental retardation and substance abuse services for a catchment area designated by the Commission for Mental Health, Mental Retardation and Substance Abuse Services.
- (7) "Certified substance abuse counselor" means an individual who is certified as a drug or alcohol abuse counselor by the North Carolina Substance Abuse Professional Certification Board.
- (8) "Chief of Mental Health Services" means the individual who is responsible for the development, provision and monitoring of mental health and mental retardation services in the Department's Division of Prisons. His duties include ensuring compliance with statutory and professional standards for services.
- (9) "Client" means an inmate who is admitted to, and receiving mental health, mental retardation, or substance abuse services from or who in the past had been admitted to and received such services from, the Department.
- (10) "Client care evaluation study" means evaluation of the quality of services by measuring actual services against specific criteria through collection of data, identification and justification of variations from criteria, analysis of unjustified variations, corrective action, and follow-up study.
- (11) "Client record" means a written account of all mental health, mental retardation, and substance abuse services provided to an inmate from the time of formal acceptance of the inmate as a client until termination of services. This information is documented on standard forms which are filed in a standard order.
- (12) "Clinician" means a psychiatrist, physician, or psychologist.
- (13) "Commission" means the Commission for Mental Health, Mental Retardation and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (14) "Contract agency" means a legally constituted entity with which the Department contracts for a service as defined in the standards exclusive of intermittent purchase of service for an individually identified client.
- (15) "Correctional Center" means a prison facility, usually of 75 to 150 inmates, that provides limited programs and services to the assigned inmate population.
- (16) "Correctional Institution" means a prison facility, usually of at least 350 inmates, that provides comprehensive programs and services to the assigned inmate population.
- (17) "Department" means the Department of Correction.
- (18) "Detoxification" means the physical withdrawal of a client from alcohol or other drugs under medical supervision.
- (19) "DIIR" means the Department of Human Resources.
- (20) "DIIR survey team" means the staff delegated by the Department of Human Resources to monitor the implementation of standards in accordance with the provisions of G.S. 148-19(d).
- (21) "Direct care staff" means staff who provide care, treatment, or habilitation services to clients on a continual and regularly scheduled basis.
- (22) "Disability group" means either the mentally retarded, mentally ill, or substance abuser.
- (23) "Discharge" means the termination of mental health, mental retardation or substance abuse services to a client.
- (24) "Dispensing medication" means issuing to a client, one or more unit doses of a medication in a suitable container with appropriate labeling.
- (25) "Documentation" means provision of written, dated and authenticated evidence of the delivery of services to a client or compliance with standards, e.g., entries in the client record, policies and procedures, minutes of meetings, memoranda, reports, schedules, notices and announcements.
- (26) "Drug" means any article recognized as a drug in the "United States Pharmacopoeia"

or any other drug compendium which is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or intended to affect the structure or any function of the body.

- (27) "Drug abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of drug use that have never met the criteria for dependence for that particular class of substance.
- (28) "Emergency service" means a service which is provided on a 24-hour non-scheduled basis to inmates for immediate screening and assessment of presenting problems. Crisis intervention and referral to other services are provided as indicated.
- (29) "Facility" means the physical area, including both buildings and grounds, under the auspices of the Department where mental health, mental retardation, or substance abuse services are provided.
- (30) "First aid" means emergency treatment for injury or sudden illness before regular medical care is available. First aid includes artificial respiration, the Heimlich maneuver, care of wounds and burns, and temporary administering of splints.
- (31) "Habilitation" means education, training, care and specialized therapies undertaken to assist a client in achieving or maintaining progress in developmental skills.
- (32) "Habilitation plan" means an individualized, written plan for clients who are mentally retarded which includes measurable, time-specific short and long-range objectives based on evaluations, observations, and other assessment data. The plan is based on the strengths and needs of the client and identifies specific staff responsibilities for implementation of the plan.
- (33) "Health Professional" means a staff member trained in the delivery of medical or mental health services.
- (34) "Inmate" means an incarcerated individual who remains in the custody of the Department.
- (35) "Inpatient service" means a service provided on a 24-hour basis under the clinical direction of a physician. The service provides continuous, close supervision for clients with moderate to severe mental health problems.
- (36) "Legend drug" means a drug that must be dispensed with a prescription.
- (37) "Medication" means a substance recognized in the official "United States Pharmacopocia" or "National Formulary" intended for use in the diagnosis, cure, miti-

gation, treatment or prevention of disease or intended to affect the structure or any function of the body.

- (38) "Mental Health Program Director" means the individual who is responsible for the operation of mental health and mental retardation services for inmates.
- (39) "Mental illness" means the term as defined in G.S. 122C-3(21).
- (40) "Mental retardation" means the term as defined in G.S. 122C-3(22).
- (41) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (42) "Officer in charge" means the custody officer who has designated responsibility for the custody and safekeeping of inmates in the facility.
- (43) "Outpatient service" means a service designed to meet the diagnostic and therapeutic needs of clients of all disability groups. Individual counseling, psychotherapy, extended testing and evaluation, and medication therapy are provided as needed.
- (44) "Patient" means "client" as defined in this Rule.
- (45) "Peer review" means the formal assessment by professional staff of the quality and efficiency of services ordered or performed by other professional staff.
- (46) "Physician" means a medical doctor who is licensed to practice medicine in the State of North Carolina under the provisions of G.S. 90-18.
- (47) "Prevention and intervention service" means a service provided to the general public or major segments of a community. Service activities include counseling, information, instruction, and technical assistance with the goals of preventing dysfunction and promoting well being.
- (48) "Privileging" means a process by which each staff member's credentials, training and experience are examined and a determination made as to which treatment or habilitation modalities he is qualified to provide.
- (49) "Program evaluation" means the systematic documented assessment of program objectives to determine the effectiveness, efficiency, and scope of the system under investigation, to define its strengths and weaknesses and thereby to provide a basis for informed decision-making.
- (50) "Protective device" means therapeutic equipment which provides support for med-

ically fragile clients or enhances the safety of clients with self-injurious behavior. Such device may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with major physical handicaps; a device such as helmets and mittens for self-injurious behaviors; or a device such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices.

- (51) "Psychiatric nurse" means an individual who is licensed to practice as a registered nurse in the State of North Carolina by the North Carolina Board of Nursing and who is a graduate of an accredited master's level program in psychiatric mental health nursing with two years of experience, or has a master's degree in behavioral science with two years of supervised clinical experience, or has four years of experience in psychiatric mental health nursing.
- (52) "Psychiatric social worker" means an individual who holds a master's degree in social work from an accredited school of social work and has two years of clinical social work experience in a mental health setting.
- (53) "Psychiatrist" means a physician who is licensed to practice medicine in the State of North Carolina and who has completed an accredited training program in psychiatry.
- (54) "Psychologist" means a psychologist who is licensed as a practicing psychologist or a psychological associate in the State of North Carolina or one exempt from licensure requirements who meets the supervision requirements of the North Carolina Board of Examiners of Practicing Psychologists.
- (55) "Psychotherapy" means a form of treatment of mental illness or emotional disorders which is based primarily upon verbal or non-verbal communication with a client. Treatment is provided by a trained professional for the purpose of removing or modifying existing symptoms, of attenuating or reversing disturbed patterns of behavior, and of promoting positive personality growth and development.
- (56) "Psychotropic medication" means medication given with the primary intention of treating mental illness. These medications include, but are not limited to, antipsychotics, antidepressants, minor tranquilizers and lithium.
- (57) "Qualified alcoholism professional" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism counseling.
- (58) "Qualified drug abuse professional" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of drug abuse counseling.
- (59) "Qualified mental health professional" means any one of the following: psychiatrist; psychiatric nurse; psychologist; psychiatric social worker; an individual with a master's degree in a related human service field and two years of supervised clinical experience in mental health services; or an individual with a baccalaureate degree in a related human service field and four years of supervised clinical experience in mental health services.
- (60) "Qualified mental retardation professional" means an individual who holds at least a baccalaureate degree in a discipline related to developmental disabilities and who has at least one year of experience in working with mentally retarded clients.
- (61) "Qualified professional" means a qualified alcoholism professional, a qualified drug abuse professional, a qualified mental health professional, a qualified mental retardation professional, or a qualified substance abuse professional.
- (62) "Qualified record manager" means an individual who is a graduate of a curriculum accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association and the Council on Education of the American Medical Record Association and who is currently registered or accredited by the American Medical Record Association.
- (63) "Qualified substance abuse professional" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism and drug abuse counseling.
- (64) "Quality assurance" means a process for objectively and systematically monitoring and evaluating the quality, appropriateness,

and effectiveness of mental health, mental retardation, and substance abuse services provided and the degree to which those services meet the identified needs and intended goals for clients.

- (65) "Release" means the completion of an inmate's active sentence and return to the community.
- (66) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove a hypothesis, or to explicate some principle or effect.
- (67) "Residential service" means a service provided in a setting where 24-hour supervision is an integral part of the care, treatment, habilitation or rehabilitation provided to the client.
- (68) "Responsible clinician" means the psychologist, psychiatrist, or physician designated as responsible for a client's treatment. This may include a clinician designated as on-call for the facility.
- (69) "Restraint" means limitation of the client's freedom of movement with the intent of controlling behavior by mechanical devices which include, but are not limited to, cuffs, ankle straps, or sheets. For purposes of these rules, restraint is a therapeutic modality and does not include protective devices used for medical conditions or to assist a non-ambulatory client to maintain a normative body position or other devices used for security purposes.
- (70) "Seclusion" means isolating a client in a separate locked room or a room from which he cannot exit for the purpose of controlling the client's behavior. For purposes of these rules, seclusion is a therapeutic modality and does not include segregation for administrative purposes.
- (71) "Service delivery site" means any area, correctional institution, residential unit, or inpatient unit operated by the Department where mental health, mental retardation, and substance abuse services are provided.
- (72) "Standards" means minimum standards as mandated by G.S. 148-19(d) for the delivery of mental health, mental retardation, and substance abuse services to inmates in the Department. Such standards prescribed by the Commission for Mental Health, Mental Retardation and Substance Abuse Services are codified in 10 NCAC 14A, .1400 - .3100.
- (73) "Substance abuse" means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impair-

ment in personal, social, or occupational functioning.

- (74) "Substance Abuse Program Director" means the individual who is responsible for the operation of substance abuse services.
- (75) "Support service" means a service provided to enhance an individual's progress in his primary treatment or habilitation program.
- (76) "Testing services" means the administration and interpretation of the results of standardized instruments for the assessment, diagnosis or evaluation of psychological or developmental disorders.
- (77) "Treatment" means the process of enhancing the physical, psychological, and social functioning of clients with identified disorders.
- (78) "Treatment plan" means an individualized, written plan of treatment for mentally ill and substance abuse clients. The plan contains time-specific short and long term goals and strategies for implementing the goals, and identifies direct care staff responsible for the provision of treatment services to the client.
- (79) "Waiver" means a situation in which the Commission determines that a specific prison site is not required to comply with a specific standard. A waiver is granted according to the provisions of 10 NCAC 14B .0500.

*Statutory Authority G.S. 148(d)(19).*

#### SECTION .1500 - ORGANIZATIONAL RESPONSIBILITIES

##### .1501 COORDINATION AND DELIVERY OF SERVICES

The Department shall develop and implement a plan to ensure coordination in the delivery of all mental health, mental retardation, and substance abuse services.

*Statutory Authority G.S. 148(d)(19).*

##### .1502 ORGANIZATIONAL CHART

The organizational chart of the Department shall clearly articulate the channels of responsibility in implementing and ensuring the coordination of mental health, mental retardation, and substance abuse services.

*Statutory Authority G.S. 148(d)(19).*

##### .1503 ORGANIZATION OF POLICIES AND PROCEDURES

(a) The Department shall maintain all policies and procedures relating to mental health, mental retardation, and substance abuse services or their management as specified in the rules of this Subchapter.

(b) The policies and procedures shall be maintained in an indexed and organized manner.

*Statutory Authority G.S. 148(d)(19).*

#### **.1504 DISTRIBUTION OF STANDARDS**

The Department shall distribute to all service delivery sites adequate copies of the rules of this Subchapter and any subsequent revisions to these rules as they occur.

*Statutory Authority G.S. 148(d)(19).*

#### **.1505 COMPLIANCE WITH STANDARDS**

The Department shall conduct annual internal evaluations of compliance with Commission standards in each service delivery site. Reports of such audits shall be made available to the DHHR survey team.

*Statutory Authority G.S. 148(d)(19).*

#### **.1506 GRIEVANCE POLICY**

The Department shall develop and implement a written inmate grievance policy which identifies procedures for review and disposition of grievances regarding mental health, mental retardation, and substance abuse services.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .1600 - REQUIRED STAFF**

#### **.1601 PSYCHIATRIST**

Each service delivery site shall employ or contract for the services of sufficient psychiatric staff to ensure clients' accessibility to services which require the judgment and expertise of a psychiatrist.

*Statutory Authority G.S. 148(d)(19).*

#### **.1602 PSYCHOLOGIST**

Each service delivery site shall employ or contract for the services of at least one psychologist; however, sufficient psychological staff shall be available to ensure clients' accessibility to services which require the judgment and expertise of a psychologist.

*Statutory Authority G.S. 148(d)(19).*

#### **.1603 REGISTERED NURSE**

(a) Each service delivery site shall employ or contract for the services of at least one psychiatric nurse.

(b) Each service delivery site shall employ or contract for a sufficient number of qualified registered nurses to give clients the nursing care that requires the judgment and specialized skills of a registered nurse.

*Statutory Authority G.S. 148(d)(19).*

#### **.1604 PSYCHIATRIC SOCIAL WORKER**

Each service delivery site shall employ or contract for the services of at least one psychiatric social worker; however, sufficient social work staff shall be available to ensure clients' accessibility to services which require the knowledge and expertise of a social worker.

*Statutory Authority G.S. 148(d)(19).*

#### **.1605 CERTIFIED ALCOHOLISM, DRUG ABUSE, OR SUBSTANCE ABUSE COUNSELOR**

Each service delivery site shall employ or contract for the services of at least one certified alcoholism counselor, certified drug abuse counselor, or certified substance abuse counselor based upon the treatment needs of the population served.

*Statutory Authority G.S. 148(d)(19).*

#### **.1606 QUALIFIED MENTAL RETARDATION PROFESSIONAL**

The Department shall have at least one qualified mental retardation professional whose primary duty is to be responsible for mental retardation services. The designated individual shall ensure the provision of necessary training and support to case managers for clients who are mentally retarded.

*Statutory Authority G.S. 148(d)(19).*

#### **.1607 STAFF DEVELOPMENT COORDINATOR**

The Department shall designate an individual whose primary responsibility is to ensure appropriate training of custodial and professional staff in the delivery of mental health, mental retardation, and substance abuse services and coordination of prevention services.

*Statutory Authority G.S. 148(d)(19).*

#### **.1608 QUALIFIED RECORD MANAGER**

(a) The Department shall have at least one qualified record manager whose primary duty is to be responsible for mental health, mental re-



tardation, and substance abuse services' records. This individual shall provide the necessary training and support to other qualified or trained record managers and staff responsible for client records.

(b) Each area and correctional institution shall employ at least one trained records manager to manage client records in the respective service delivery site.

(c) Each residential and inpatient unit shall employ at least one qualified record manager.

*Statutory Authority G.S. 148(d)(19).*

#### **.1609 SUPPORT STAFF**

Each service delivery site shall have support staff sufficient to ensure the delivery of mental health, mental retardation, and substance abuse services to clients. This includes, but need not be limited to, clerical staff.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .1700 - ORGANIZATIONAL RELATIONS**

#### **.1701 COORDINATION OF SERVICES**

The Department shall establish internal working relationships between the staff of mental health, mental retardation, and substance abuse services, custody personnel, and other service staff to assure a comprehensive system of services for inmates who are mentally ill, mentally retarded or substance abusers.

*Statutory Authority G.S. 148(d)(19).*

#### **.1702 INFORMATION AND OUTREACH SERVICES**

The Department shall provide to staff information designed to promote awareness of mental health, mental retardation, and substance abuse services available to inmates within the Department.

*Statutory Authority G.S. 148(d)(19).*

#### **.1703 AGREEMENT WITH THE DEPARTMENT OF HUMAN RESOURCES**

The Department shall develop a written agreement with the Department of Human Resources regarding mutual responsibilities for mental health, mental retardation, and substance abuse services to inmates.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .1800 - QUALITY ASSURANCE**

#### **.1801 SCOPE**

Quality assurance is a continuing responsibility of the Department and each service delivery site that offers mental health, mental retardation, and substance abuse services. Quality assurance activities include clinical and professional supervision and privileging; client care evaluation studies; record review; utilization and peer review; employee education and training; program evaluation and assurance of corrective action.

*Statutory Authority G.S. 148(d)(19).*

#### **.1802 QUALITY ASSURANCE PLAN**

(a) The Department shall establish and implement a written quality assurance plan for mental health, mental retardation, and substance abuse services which shall describe how quality assurance activities shall be carried out. Quality assurance activities shall include the following:

- (1) an objective and systematic process for monitoring and evaluating the quality and appropriateness of client care including a review of significant incidents, e.g. suicides, sudden deaths, and major assaults;
- (2) a written plan of professional clinical supervision describing such activities and how they shall be carried out;
- (3) the establishment and implementation of program evaluation activities;
- (4) the strategies for improving client care; and
- (5) the resolution of identified problems.

(b) The plan shall be reviewed annually by the Department and revised if necessary.

*Statutory Authority G.S. 148(d)(19).*

#### **.1803 QUALITY ASSURANCE COMMITTEES**

(a) The Department shall have two quality assurance committees: one for mental health and mental retardation and a second for substance abuse.

(b) The purpose, scope and organization of the quality assurance committees shall be specified in the quality assurance plan.

(c) Each quality assurance committee shall meet at least monthly.

*Statutory Authority G.S. 148(d)(19).*

#### **.1804 COMPOSITION AND ACTIVITIES OF QUALITY ASSURANCE COMMITTEES**

(a) Each quality assurance committee shall be comprised of representation from each relevant disability service area and a representative of administration from the respective disability. Committee members shall also include a nurse.

a psychologist, a physician, a social worker, and qualified substance abuse professional.

(b) A member of a quality assurance committee shall not review his own clients' treatment or habilitation records.

(c) Minutes of meetings shall be recorded and shall include date; time; attendees and absentees; and a summary of the business which was conducted.

*Statutory Authority G.S. 148(d)(19).*

**.1805 CLIENT CARE EVALUATION STUDIES**

The quality assurance committees shall ensure that at least two client care evaluation studies of issues relevant to the improvement of services to clients are completed during each fiscal year.

*Statutory Authority G.S. 148(d)(19).*

**.1806 CLIENT RECORD REVIEW**

Each quality assurance committee shall establish, implement and document the criteria, procedure and methodology for client record reviews for completeness and adequacy as delineated in Section .0700 of this Subchapter.

*Statutory Authority G.S. 148(d)(19).*

**.1807 UTILIZATION AND PEER REVIEW**

Each quality assurance committee shall establish, implement and document the criteria, procedure and methodology for utilization and peer review.

*Statutory Authority G.S. 148(d)(19).*

**.1808 SUPERVISION OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE STAFF**

(a) The Department shall implement a written plan of supervision for staff who are not qualified mental health, mental retardation, or substance abuse professionals and who provide mental health, mental retardation, or substance abuse services.

(b) Each staff member who is not a qualified professional in that service area shall have an individual contract of supervision.

(c) Each mental health or substance abuse staff member who provides services and who is not qualified in that service area shall be supervised by a professional qualified in his disability service area. Each mental retardation staff member shall be supervised by, or have access to the professional supervision of, a qualified mental retardation professional.

*Statutory Authority G.S. 148(d)(19).*

**.1809 PRIVILEGING OF ALL PROFESSIONAL STAFF**

(a) The Department shall implement written policies and procedures by which the qualifications of each professional are examined and a determination made as to treatment or habilitation privileges granted and supervision needed.

(b) Delineation of privileges shall be based on documented verification of the individual's competence, training, experience and licensure.

(c) These policies and procedures shall be reviewed and approved by the Department's quality assurance committees.

*Statutory Authority G.S. 148(d)(19).*

**.1810 EMPLOYEE EDUCATION AND TRAINING**

(a) The Department shall provide or secure orientation programs and annual continuing education and training for employees to enhance their competencies and knowledge needed to administer, manage, and deliver quality mental health, mental retardation, and substance abuse services. The education and training activities shall address at a minimum the needs identified by the quality assurance process and related committees.

(b) The Department shall assure the maintenance of an ongoing record of all education and training activities provided or secured for employees.

(c) Education and training activities shall be provided at no expense to staff.

*Statutory Authority G.S. 148(d)(19).*

**.1811 PROGRAM EVALUATION ACTIVITIES**

(a) The Department shall implement program evaluation activities.

(b) These activities shall reflect the evaluation of program quality, effectiveness and efficiency in such areas as:

- (1) the impact of the program in reducing readmissions;
- (2) availability and accessibility of services;
- (3) impact of services upon the inmates within the service area;
- (4) patterns of use of service; and
- (5) cost of the program operation.

*Statutory Authority G.S. 148(d)(19).*

**.1812 QUALITY ASSURANCE ANNUAL REPORT**

The Department shall make available to the Department of Human Resources a written annual report summarizing the activities and rec-

ommendations of the quality assurance committees. This report shall include at a minimum the following functional areas:

- (1) client care evaluation studies;
- (2) client record reviews;
- (3) utilization and peer reviews;
- (4) clinical supervision;
- (5) employee education and training activities; and
- (6) the results of program evaluation.

*Statutory Authority G.S. 148(d)(19).*

#### **.1813 CORRECTIVE ACTION**

The Department shall ensure that corrective action is taken to address problems found through the quality assurance process.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .1900 - FACILITIES MANAGEMENT**

#### **.1901 SCOPE**

The standards in this Section apply to each service delivery site within the Department and to any other provider of services on a contractual basis.

*Statutory Authority G.S. 148(d)(19).*

#### **.1902 BUILDINGS AND GROUNDS**

Buildings and grounds shall be well-maintained in order to promote the health and safety of both clients and staff and to enhance the image of mental health, mental retardation, and substance abuse services.

*Statutory Authority G.S. 148(d)(19).*

#### **.1903 SPACE REQUIREMENTS**

(a) Space shall be provided to facilitate the delivery of mental health, mental retardation, and substance abuse services.

(b) Space for mental health, mental retardation, and substance abuse clients shall be no less than that afforded the general population.

(c) Each client in a residential or inpatient unit shall have at least 60 square feet for single occupancy and 50 square feet per client when more than one client occupies the same cell.

(d) In residential and inpatient units, no more than two clients may share an individual cell regardless of cell size.

(e) Each service delivery site shall have private space for interviews and conferences with clients.

(f) Individual space shall be provided for the storage of each client's personal belongings.

(g) When physical examinations or medical procedures are performed in any service delivery

site, the examination area shall afford privacy for the client.

*Statutory Authority G.S. 148(d)(19).*

#### **.1904 EQUIPMENT AND FURNISHINGS**

Equipment and furnishings shall be age-appropriate.

*Statutory Authority G.S. 148(d)(19).*

#### **.1905 ADDITIONAL REQUIREMENTS FOR RESIDENTIAL UNITS AND INPATIENT UNITS**

(a) Each residential and inpatient unit providing mental health, mental retardation, or substance abuse services shall have indoor space for group activities and gatherings.

(b) The space in which therapeutic and habilitative activities are routinely conducted shall be separate from sleeping areas.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .2000 - CLIENT RECORDS**

#### **.2001 SCOPE**

The standards in this Section apply to each service delivery site and to any other provider of services on a contractual basis unless otherwise specified in this Section. This Section applies to the management of client information which is generated by a service delivery site during the period of time that treatment or habilitation services are rendered to clients. Such information shall provide a means of communication for the staff working with the client; serve as a basis for analysis, study and evaluation of quality of service; and protect the legal interests of clients and staff.

*Statutory Authority G.S. 148(d)(19).*

#### **.2002 STANDARD CLIENT RECORD**

The Department shall develop and maintain a standard client record for each inmate who receives mental health, mental retardation, or substance abuse treatment or habilitation services. The same forms and filing format shall be utilized within each disability.

*Statutory Authority G.S. 148(d)(19).*

#### **.2003 RECORD REQUIREMENTS**

(a) There shall be a written client record maintained for every client undergoing active treatment or habilitation.

(b) Each client record shall contain, at a minimum, the following identifying information:

- (1) inmate's name;
- (2) inmate's record number;
- (3) date of birth;
- (4) race, sex, and marital status;
- (5) name, address and telephone number of legally responsible person or next of kin;
- (6) admission date; and
- (7) discharge date.

(c) Active outpatient client records shall be kept in the outpatient medical record, which will be filed at the client's assigned unit.

(d) Each inpatient program shall maintain active inpatient records which shall be kept separate from the outpatient records. This record shall be transferred to the inpatient unit where the client is receiving services.

(e) Information required in other rules in this Subchapter (such as, but not limited to, medication prescribing, administering medication, seclusion) shall be documented in the client record.

(f) All client record entries shall include the date of entry and authentication by the individual making the entry. The time of service, activity, or incident shall be recorded (e.g., shift notes, medication administration, and accidents and injuries).

(g) All client record entries shall be legible and made in permanent ink or typewritten.

(h) Alterations in client records, which are necessary in order to correct recording errors or inaccuracies, shall be made as follows:

- (1) Alterations shall be made by the individual who recorded the entry.
- (2) A single, thin line shall be drawn through the error or inaccurate entry with the original entry still legible.
- (3) The corrected entry shall be legibly recorded above or near the original entry. An explanation as to the type of documentation error or inaccuracy shall be recorded whenever the reason for the alteration is unclear.
- (4) Alterations shall include the date of correction and initials of recorder.

(i) Each page of the client record shall include the inmate's name and number.

(j) Client records shall contain only those symbols and abbreviations included on an abbreviation list approved by the Department.

(k) Notations in a client's record shall not identify another client by name.

(l) Each service delivery site shall designate in writing those individuals authorized to have access to and to document in client records.

(m) Any additional information regarding the following shall be included in the client record:

- (1) diagnostic tests, assessments, evaluation, consultations, referrals, support services or medical services provided;
- (2) known allergies or hypersensitivities;
- (3) major events, accidents or medical emergencies involving the client;
- (4) consent for, and documentation of, release of information;
- (5) documentation of applied behavior modification which includes at risk or other intrusive interventions, including authorization, duration, summaries of observation and justification;
- (6) conferences or involvements with the client's family, significant others, or involved agencies or service providers;
- (7) documentation of attendance in the outpatient service; and
- (8) results of any standardized and non-standardized evaluations such as social, developmental, medical, psychological, vocational or educational.

*Statutory Authority G.S. 148(d)(19).*

#### **.2004 CONFIDENTIALITY OF CLIENT RECORD**

(a) All information contained in the client record shall be considered privileged and confidential, with the exception of information considered matters of public record.

(b) The Department shall ensure confidentiality of client records.

- (1) The Department shall develop written policies and procedures regarding access to client records in accordance with the rules of this Subchapter and applicable statutes.
- (2) Only staff involved in a client's treatment or habilitation and personnel having specific record responsibilities shall have access to client records. Staff authorized to have access to client records shall be designated in writing by the Mental Health Program Director or Substance Abuse Program Director.
- (3) Active client records shall be kept separate from active administrative folders and shall be maintained in a secure location which shall be locked except when under the supervision of staff who are authorized to have access to client records.
- (4) On a need-to-know basis, information from client records may be provided for departmental management decisions. However, such information shall be provided by a mental health, mental retardation, or substance abuse professional who

summarizes or interprets the information provided therein.

(c) The Department shall ensure that information contained in client records is released upon the written authorization of the inmate or as otherwise specified in this Rule.

- (1) If a client is being considered for parole, a summary of the pertinent contents of his client record may be made available, upon request, to the Parole Commission.
- (2) Individuals responsible for conducting general research or clinical, financial, or administrative audits may have access to client records, if there is a justifiable, documented need for such information. A person receiving the information may not directly or indirectly identify any client in any report of the research or audit or otherwise disclose client identity in any way.
- (3) A qualified professional may disclose client record information when he determines that such disclosure is necessary to protect against clear and substantial risk or imminent serious injury, disease, or death being inflicted by the inmate on himself or others, or a threat to the security of the unit.
- (4) Information in the client record shall be disclosed if a court of competent jurisdiction issues an order compelling disclosure.
- (5) Information may be disclosed in accordance with the provisions of G.S. 122C-55(c).
- (d) Confidential information regarding substance abusers shall be released or disclosed in accordance with federal rules 42 C.F.R. Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records", unless the rules in this Subchapter are more restrictive in which case the rules in this Subchapter shall be followed.
- (e) Employees governed by the State Personnel Act, G.S. Chapter 126, are subject to suspension, dismissal or disciplinary action for failure to comply with the rules in this Subchapter.
- (f) Records shall be protected against loss, tampering, or use by unauthorized persons and shall be readily accessible at all times.
- (g) The Department shall make known to all employees, students, volunteers and all other individuals with access to confidential information the provisions of the rules in this Subchapter. Such individuals shall indicate an understanding of the requirements governing confidentiality by signing a statement of understanding and compliance. Employees shall sign such statement prior to access to any confidential information and, again, whenever revisions are made in the

confidentiality requirements. Such statement shall contain the following information:

- (1) date and signature of the individual and his title, if applicable;
- (2) service delivery site;
- (3) statement of understanding;
- (4) agreement to hold information confidential; and
- (5) acknowledgement of disciplinary action for improper release or disclosure.
- (h) When consent for release of information is obtained in accordance with the rules in this Subchapter, a consent for release of information form containing the information set out in this Rule shall be utilized.
  - (1) The consent form shall contain the following information:
    - (A) client's name;
    - (B) name of facility releasing the information;
    - (C) name of individual or agency to whom information is being released;
    - (D) information to be released;
    - (E) purpose for the release;
    - (F) length of time consent is valid;
    - (G) a statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent;
    - (H) signature of the client or the client's legally responsible person;
    - (I) signature of individual witnessing consent; and
    - (J) date consent is signed.
  - (2) A consent for release of information shall be valid for a period not to exceed one year.
  - (3) A consent for release of information received from an individual or agency not covered by the rules in this Subchapter does not have to be on the form utilized by the Department; however, the Mental Health Program Director or Substance Abuse Program Director shall determine that the content of the consent form substantially conforms to the requirements set forth in this Rule.
  - (4) A clear and legible photocopy of a consent for release of information may be considered to be as valid as the original.
  - (5) Consent may be withdrawn by written request of the client at any time following its inception.

*Statutory Authority G.S. 148(d)(19).*

.2005 DIAGNOSTIC CODING

The Department shall code diagnoses for clients using the following diagnostic systems:

- (1) Mental illness, mental retardation or substance abuse shall be diagnosed according to the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition - Revised (DSM-III-R).
- (2) Physical disorders shall be diagnosed according to International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).

*Statutory Authority G.S. 148(d)(19).*

#### **.2006 TRANSFER OF CLIENT RECORDS**

The Department shall develop and implement procedures which shall specifically address transportation of client records by persons other than qualified professionals consistent with other rules of this Subchapter.

*Statutory Authority G.S. 148(d)(19).*

#### **.2007 CLIENT RECORD AVAILABILITY**

The Department shall develop and implement procedures which shall make client records available to professional staff for a minimum of three years. This shall apply to previous incarcerations.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .2100 - MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICE ELIGIBILITY**

#### **.2101 SCOPE**

The standards in this Section apply to each service delivery site within the Department and to any other provider of services on a contractual basis.

*Statutory Authority G.S. 148(d)(19).*

#### **.2102 POLICY REQUIREMENTS**

Through the adoption of policy, the Department shall delineate the inmate population for which its mental health, mental retardation, and substance abuse services are intended as well as the criteria of service eligibility. Such policies shall be communicated to inmates.

*Statutory Authority G.S. 148(d)(19).*

#### **.2103 SCREENING**

(a) The Department shall develop written policies establishing a systematic means of screening each inmate at initial contact by interviewing the inmate to determine his need for services.

(b) The policy shall designate who is deemed qualified to make screening determinations.

*Statutory Authority G.S. 148(d)(19).*

#### **.2104 SERVICE PURPOSE AND ELIGIBILITY REQUIREMENTS**

The Department shall develop written policies addressing eligibility for service requirements for each service delivery site including admission, treatment or habilitation, and discharge criteria.

*Statutory Authority G.S. 148(d)(19).*

#### **.2105 WAITING LISTS**

The Department shall develop written policies concerning waiting lists for mental health, mental retardation, and substance abuse services in the prison system.

*Statutory Authority G.S. 148(d)(19).*

#### **.2106 INFORMATION REGARDING AVAILABILITY TO SERVICES**

The Department shall ensure that each inmate is informed of procedures for seeking access or referral to mental health, mental retardation, and substance abuse services at each service delivery site.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .2200 - TREATMENT AND HABILITATION**

#### **.2201 SCOPE**

(a) The standards in this Section apply to each service delivery site within the Department and to any other provider of services on a contractual basis.

(b) The process of treatment or habilitation shall incorporate activities and procedures that address, in a comprehensive manner, the client's assets and needs from the point of initial contact, through active treatment or habilitation, and after discharge. The process shall be designed to ensure that the established treatment or habilitation goals have continuing appropriateness for the client and that services are provided in the least restrictive environment.

*Statutory Authority G.S. 148(d)(19).*

#### **.2202 ADMISSION ASSESSMENT**

(a) Each service delivery site shall have written procedures for an admission assessment.

(b) These procedures shall delineate the standardized information required which at a minimum shall include:

- (1) admission note within 24 hours of admission;
- (2) the present condition of the client reported in objective, behavioral terms, and where possible a description of the client's condition by others;
- (3) social, educational, and medical histories and, if appropriate, vocational, developmental, psychiatric, legal and nutritional histories;
- (4) determination of and request for additional referrals for special diagnostic tests, assessments or evaluations, if needed;
- (5) reason for admission; and
- (6) preliminary individual treatment or habilitation plan.

*Statutory Authority G.S. 148(d)(19).*

#### .2203 EVALUATION AND DIAGNOSIS

(a) Each service delivery site shall specify in writing any routine diagnostic tests, assessments and evaluations or medical examinations, as well as time frames for their completion, which shall be completed for each client.

(b) Diagnoses shall be established using DSM-III-R and ICD-9-CM.

*Statutory Authority G.S. 148(d)(19).*

#### .2204 TREATMENT OR HABILITATION PLAN

(a) Each service delivery site shall develop an individualized treatment or habilitation plan for each client based upon an evaluation of his condition, assets and needs. This plan shall provide a systematic approach to the treatment or habilitation of the client and substantiate the appropriateness of current treatment or habilitation goals. Clinical responsibility for the development and implementation of the plan shall be designated.

(b) The treatment or habilitation plan shall be consistent with the diagnosis and shall be documented in the client record as follows:

- (1) A comprehensive treatment plan or habilitation plan shall be developed within 30 days of admission to outpatient or residential services or within ten days of admission to inpatient services.
- (2) The treatment plan or habilitation plan shall be based upon information gathered during the admission assessment process.
- (3) The treatment plan or habilitation plan shall include at least the diagnosis, time-specific short- and long-term measurable goals, staff responsibility for plan implementation and a summary of client and,

if appropriate, family strengths and weaknesses.

- (4) Progress notes shall be recorded on at least a weekly basis in residential and inpatient services and following each scheduled appointment in outpatient services. Progress notes shall reflect the client's progress or lack of progress toward meeting goals, staff interventions, information which may have a significant impact on the client's condition, and indicate reviews of relevant laboratory reports and actions taken.

- (5) The comprehensive treatment plan or habilitation plan shall be revised whenever medically or clinically indicated and must be thoroughly reviewed at least every six months with such review documented in the plan.

(c) The treatment plan or habilitation plan shall be developed in partnership with the client or individual acting on behalf of the client whenever possible.

*Statutory Authority G.S. 148(d)(19).*

#### .2205 TRANSFER OR DISCHARGE SUMMARY

(a) Whenever a client is transferred to a different level of service, a written transfer note by the referring unit shall accompany the client which summarizes the client's condition at the time of transfer and any recommendations for continued care. A qualified professional in the receiving unit shall evaluate the client to determine the need for continued treatment or habilitation.

(b) At the time of discharge from a service delivery site, a discharge summary shall be completed which includes the reason for admission; course and progress of the client in relation to the goals and strategies in the individual treatment or habilitation plan; condition of the client at discharge; recommendations and arrangements for further services or treatment; and final diagnosis.

*Statutory Authority G.S. 148(d)(19).*

#### .2206 TREATMENT AND HABILITATION COORDINATION

(a) Coordination shall be maintained among all staff members contributing to the evaluation, planning, and treatment and habilitation efforts for each client.

(b) Each service delivery site utilizing shifts or relief staff shall develop mechanisms to ensure adequate communication among staff regarding clients.

*Statutory Authority G.S. 148(d)(19).*

#### **.2207 RELEASE PLANNING**

(a) When release of a client can be anticipated and the need for continued treatment has been identified, each client shall have a written individualized aftercare plan.

(b) The aftercare plan shall:

- (1) be formulated by qualified professionals;
- (2) inform the client of where and how to receive treatment or habilitation services;
- (3) identify continuing treatment or habilitation needs, and address issues such as food, housing, and employment;
- (4) indicate the need and plan, if applicable, to involuntarily commit (inpatient or outpatient);
- (5) involve the respective area program or state facility when indicated;
- (6) address the procurement and availability of medication prescribed for mental health, mental retardation, or substance abuse problems for the released inmate regardless of his ability to pay;
- (7) address the use and coordination of generic resources in the community (e.g. Employment Security Services, Vocational Rehabilitation Services, community colleges, YMCA, etc.); and
- (8) be provided to the client.

(c) The Department shall establish written policies and procedures to ensure that every reasonable effort is made to assist a client in obtaining needed services upon release. The policies and procedures shall include the designation of qualified professional staff to assist the client in establishing contact with the respective area program or state facility and furnishing information to ensure continuity of treatment.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .2300 - CLINICAL SERVICES**

#### **.2301 SCOPE**

(a) The standards in this Section apply to each service delivery site and to any other provider of services on a contractual basis that incorporate clinical services in their activities.

(b) The provision of clinical services, including individual and group counseling and psychotherapy services, testing services and specialized therapies of various kinds shall be provided by qualified staff as an essential component of the treatment or habilitation process.

*Statutory Authority G.S. 148(d)(19).*

#### **.2302 COUNSELING AND PSYCHOTHERAPY SERVICES**

Individual, group and family counseling and psychotherapy shall be provided by, or under the direct supervision of, qualified professionals who have received training in these treatment or habilitation modalities.

*Statutory Authority G.S. 148(d)(19).*

#### **.2303 SPECIALIZED THERAPIES**

Medical care, physical therapy, occupational therapy, language and communication therapy, and nursing care shall be provided by, or under the direct supervision of, staff licensed or registered to perform these activities.

*Statutory Authority G.S. 148(d)(19).*

#### **.2304 TESTING SERVICES**

Psychological, developmental, educational and intelligence testing shall be performed by individuals who are licensed, certified, or trained and supervised to utilize the particular testing instrument being administered.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .2400 - MEDICAL SERVICES**

#### **.2401 SCOPE**

The standards in this Section apply to each service delivery site and to any other provider of services on a contractual basis that provide medical services.

*Statutory Authority G.S. 148(d)(19).*

#### **.2402 PHYSICIAN RESPONSIBLE FOR PROVISION OF MEDICAL SERVICES**

A physician shall have responsibility for the provision of medical services associated with mental health, mental retardation, and substance abuse needs of clients. Such services include, but need not be limited to, evaluating medication needs, prescribing of medications, the ordering of laboratory tests to assist in the diagnosis and monitoring of problems associated with the mental health, mental retardation, or substance abuse disorders of clients, and proper referral to other medical specialists when indicated.

*Statutory Authority G.S. 148(d)(19).*

#### **.2403 CLIENT EVALUATION BY A PHYSICIAN**

Each client shall be evaluated by a physician prior to the provision of medical services associated with mental health, mental retardation, or substance abuse needs of the client.



*Statutory Authority G.S. 148(d)(19).*

## **SECTION .2500 - MEDICATION SERVICES**

### **.2501 SCOPE**

The standards in this Section apply to each service delivery site and to any other provider of services on a contractual basis that provide medication services. Medication services include the prescribing, dispensing, administration, storage, and control of medication and the provision of education to those clients who are placed on medication for problems associated with mental health, mental retardation, and substance abuse disabilities and needs.

*Statutory Authority G.S. 148(d)(19).*

### **.2502 PRESCRIBING OF MEDICATION**

(a) Only a physician or person authorized by state law shall be permitted to prescribe legend drugs.

(b) A physician or person authorized to prescribe legend drugs shall approve the use of non-prescription medications and standing orders.

(c) A physician assistant shall not prescribe psychotropic medication unless authorized by the N.C. Board of Medical Examiners.

(d) A nurse practitioner shall not prescribe psychotropic medication unless authorized by the N.C. Board of Medical Examiners and the Board of Nursing.

(e) Each medication prescribed by the medical services shall be documented in the client's record and signed by the prescriber.

(f) The client's drug therapy regimen shall be assessed by a physician for appropriateness at least every 60 days in outpatient and residential services and every 30 days in inpatient services.

*Statutory Authority G.S. 148(d)(19).*

### **.2503 DISPENSING OF MEDICATION**

(a) Medication shall be dispensed by a pharmacist or physician in a properly labeled container in accordance with state and federal law.

(b) The medication container shall protect medication from light and moisture and shall be in compliance with the Poison Prevention Packaging Act.

(c) The medication container label shall include the following:

- (1) inmate's name;
- (2) date issued or refilled;
- (3) directions for administration;
- (4) medication name and strength;

- (5) name, address and telephone number of dispensing site;
- (6) prescriber's name;
- (7) dispenser's name; and
- (8) ancillary cautionary labeling.

*Statutory Authority G.S. 148(d)(19).*

### **.2504 ADMINISTRATION OF MEDICATION**

(a) Prescription medication shall be administered in service delivery sites only on the written or verbal order of an authorized prescriber.

(b) Non-prescription medications and standing orders shall be administered only on the written approval of a physician or person authorized to prescribe legend drugs.

(c) Only properly dispensed medication shall be administered.

(d) Medication shall be administered in inpatient psychiatric services only by a physician, physician assistant or nurse. In other service delivery sites, medication may be administered by program or correctional staff who have received certified training. Self-administrations of medication may be supervised by program or correctional staff who have received instruction about each medication, dosage, time of administration, side effects and contraindications from either the program's physician or designee.

(e) A list of persons approved to administer medication shall be maintained by the service delivery site.

(f) A physician shall approve the self-administration of prescription medication. The competent adult client may self-administer medication. Where applicable, clients shall receive instruction in the self-administration of medication.

(g) The administration of medication by staff shall be documented in the client record on an individualized medication administration record which shall contain a record of doses administered.

(h) Medication administration errors and adverse drug reactions shall be recorded in the client record and reported to the attending physician.

*Statutory Authority G.S. 148(d)(19).*

### **.2505 INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION**

(a) Psychotropic medication may be forcibly administered if:

- (1) failure to treat the inmate's illness or injury would pose an imminent substantial threat or injury or death to the inmate or those around him; or
- (2) there is evidence of a worsening of the inmate's condition which, if not treated, is

likely to produce acute exacerbation of his condition such that his safety or that of others would be endangered. The evidence of substantial and prolonged deterioration must be corroborated by the medical history. The source of the history must be documented in the inmate's record.

(b) A medication refusal exists when an inmate indicates by strong words or gestures, or otherwise demonstrates a definite unwillingness to take medication. Any inmate who accepts medication within 30 minutes of the initial offer shall not be considered to have refused medication.

(c) Whenever a client refuses a prescribed medication:

- (1) an entry to this effect must be made in the client record;
- (2) all incidents of medication refusal shall be reported as promptly as possible to the psychiatrist treating the client;
- (3) all incidents of medication refusal shall be entered on the progress notes and medication chart, Form DC-175, by the medical staff responsible for administering the medication;
- (4) staff shall attempt to determine the cause of the refusal by questioning the client and efforts to encourage him to accept the medication shall be made and documented in the record; and
- (5) the treatment team shall discuss the reasons for refusal directly with the inmate and shall attempt to resolve those concerns which are the source of the refusal. These persuasive efforts may include calling on the resources of other available staff but shall not be coercive. Such counseling shall be attempted in an isolated area away from the scene of agitation. The inmate's comments, if any, shall be noted.

(d) Upon the occurrence of a medication refusal, the physician shall evaluate whether to administer medication over the inmate's refusal:

- (1) If the physician determines that the condition set forth in (a)(1) of this Rule; and
  - (A) the medication is a generally accepted treatment for the inmate's condition,
  - (B) there is a substantial likelihood that the treatment will effectively reduce the signs and symptoms of the inmate's illness, and
  - (C) the proposed medication is the least intrusive from a therapeutic viewpoint of the possible treatments,
 then an involuntary medication order may be issued. In all cases, the medication

shall not exceed the dosage expected to accomplish the treatment objective.

- (2) If a psychiatrist believes that the condition set forth in (a)(2) of this Rule are met, he shall refer the matter to an Involuntary Medication Committee which shall determine whether the condition as set forth in (a)(2) of this Rule exists and whether an involuntary medication order should be issued. In making its determination, the Committee shall apply the criteria set forth in (c) and (d)(1) of this Rule.
- (3) If neither of the conditions set forth in (a) of this Rule exists, the inmate's refusal to accept the medication will be honored.
- (4) In the case where a condition set forth in (a) of this Rule is likely to continue for 14 days, an involuntary medication order may be issued on an as necessary (PRN) basis for a period not exceeding 30 days subject to the approval of the Involuntary Medication Committee. Near the conclusion of the 30-day involuntary medication order, if the inmate still refuses to accept medication essential to prevent the recurrence of the conditions which justified the initial administration of the medication, a referral to the Involuntary Medication Committee shall be made.
- (5) Prior to the forceful administration of medication in response to a PRN order, the nurse or physician's assistant shall notify his immediate supervisor and advise him of the circumstances. If the responsible psychiatrist is immediately available, he too shall be notified. Should the psychiatrist not be immediately available, the immediate supervisor, if he decides that the medication is needed, shall grant permission to the attending health professional to administer the prescribed medication in response to the PRN order.
- (6) In cases where an involuntary 30-day medication order is issued due to a treating psychiatrist's determination that medication may have to be administered pursuant to (a) of this Rule, the Involuntary Medication Committee shall review the order within 14 days to determine whether it should be continued.
- (7) At the conclusion of a 30-day involuntary medication order, if the client continues to refuse voluntary medication, that refusal shall be honored unless the Involuntary Medication Committee has met and determined that the conditions in (a), (c), and (d)(1) of this Rule are met.

(e) Involuntary Medication Committee:

- (1) The Involuntary Medication Committee shall be appointed by the Director of the Division of Prisons and consist of a psychiatrist, a psychologist, and a mental health nurse.
  - (A) If the psychiatrist who issued the involuntary medication order or wrote a PRN order is the individual who normally sits on the Committee, another psychiatrist shall serve in his place; however, the psychiatrist who issued the involuntary medication order may be requested by the Committee to be present to respond to any inquiries.
  - (B) Other prison staff, e.g., nursing staff, case manager, counselors, social workers, custody staff, etc. shall be encouraged to attend the Committee meeting and participate in order to provide pertinent information that would be useful to the Committee in making its determination.
- (2) Whenever the treating psychiatrist determines that the inmate must be treated without his consent pursuant to (a)(2) of this Rule, the inmate may request to appear before the Committee to state his reasons for refusing consent. He may appear for the purpose of stating his case only and shall be excused from the meeting after he has spoken. No inmate shall be refused the opportunity to appear before the Committee unless the Committee makes a prior determination that the inmate's condition is so serious that he cannot communicate.
- (3) The three members of the Committee shall determine whether the involuntary medication order will be continued.
- (4) At any time the Committee may have questions concerning the legal propriety of forcibly administering medications in a given case, it shall consult an attorney on staff of the Department or an attorney in the Attorney General's Office assigned to represent the Department.
- (f) Patient Representative:
  - (1) Whenever an inmate refuses medication as defined in (a)(2) of this Rule, the Mental Health Program Director or his designee shall appoint a member of the treatment staff to serve as a patient representative. The role of the patient representative shall be to assist the inmate in verbalizing the reasons for his refusal in meetings with his treatment team and before the Involuntary Medication Committee.
  - (2) A summary of the reasons for the refusal shall be recorded in the client's record.
  - (3) The personal representative shall appear before the Involuntary Medication Committee whenever he feels that it is in the best interest of the client or at his request.
  - (4) When reviewing any case involving the involuntary administration of medication, the Involuntary Medication Committee shall consider oral or written comments from the patient representative.
  - (5) No patient representative shall be subject to discipline for acting on behalf of a patient in accordance with this policy.
  - (g) Complete documentation of all actions relating to the forceful administration of medication shall be included in the client's record.

*Statutory Authority G.S. 148(d)(19).*

#### **.2506 STORAGE OF MEDICATION**

All medication shall be stored as follows:

- (1) Medication shall be stored under proper conditions of sanitation, temperature, light, moisture and ventilation.
- (2) Medication shall be stored in a securely locked cabinet.
- (3) Only those persons authorized to prescribe or administer medication shall have access to stored medication.
- (4) Medication for external use shall be segregated from medication for internal use.
- (5) Medication stored in a refrigerator used for other purposes shall be kept in a separate, securely locked compartment.
- (6) Space for medication storage shall be of sufficient size to allow separate storage of each client's medication and to prevent overcrowding.

*Statutory Authority G.S. 148(d)(19).*

#### **.2507 DISPOSAL OF MEDICATION**

Medications shall be disposed of in the following manner:

- (1) Controlled substances. In consultation with a pharmacist, the service delivery site shall adopt procedures for the disposal of controlled substances consistent with state and federal laws.
- (2) Non-controlled substances (prescription medication).
  - (a) Any service delivery site disposing of prescription medication shall do so in a manner that guards against diversion and accidental ingestion. The preferable method of disposal is by incineration whenever available. Other acceptable

methods of disposal may include, but need not be limited to, the following:

- (i) transfer of medication to a pharmacy for destruction; or
- (ii) flush into a sewer system.
- (b) A record of medication disposal shall be maintained. The record shall include the following:
  - (i) client's name (if applicable);
  - (ii) name and strength of medication;
  - (iii) drugstore name and prescription number (if applicable);
  - (iv) quantity to be disposed;
  - (v) method of disposal;
  - (vi) date of disposal;
  - (vii) signature of employee disposing of the medication; and
  - (viii) signature of employee witnessing the disposal.

*Statutory Authority G.S. 148(d)(19).*

#### **.2508 PSYCHOTROPIC MEDICATION EDUCATION**

(a) Each client to be started or maintained on psychotropic medication shall receive individual or group education regarding the prescribed medication. The following information shall be provided to the client by the prescribing physician or other person approved by the physician:

- (1) at the time the medication is ordered:
  - (A) the name, appearance and dosage regimen, intended use and common side effects of the medication;
  - (B) adverse reactions or uncomfortable side effects that should prompt calling a physician; and
  - (C) food, drugs or beverages that should be avoided or taken with medication.
- (2) at the time of the client's release from prison:
  - (A) an alternative dosage regimen if a dose is missed;
  - (B) the expected length of the medication treatment;
  - (C) refill instructions;
  - (D) the proper place to store medication; and
  - (E) the need to communicate and coordinate with other physicians if applicable, regarding any other medications prescribed at the service delivery site.
- (b) Medication education provided shall be individualized for each client and documented in the client record.
- (c) Medication education shall be coordinated with the discharging or receiving program.

*Statutory Authority G.S. 148(d)(19).*

#### **SECTION .2600 - PROTECTIONS REGARDING CERTAIN PROCEDURES**

##### **.2601 SCOPE**

The rules in this Section specify protections regarding the use of certain specified procedures in order to promote dignity and humane care for inmates receiving mental health, mental retardation, and substance abuse services.

*Statutory Authority G.S. 148(d)(19).*

##### **.2602 GENERAL POLICIES AND PROCEDURES REGARDING THE USE OF THERAPEUTIC SECLUSION AND RESTRAINT**

(a) For the purpose of the rules in this Subchapter, seclusion and restraint are therapeutic modalities for use with mentally ill clients who do not possess the capacity for rational control of their behavior. They shall be used only to establish prompt control of clients who are experiencing medical or emotional crisis or to prevent such crisis from occurring based on substantial evidence that a crisis is likely to occur given past history or the circumstances of the present situation. The use of seclusion and restraint in this Section is distinguished from its use for administrative purpose.

(b) Except in an emergency as delineated in Rules .1303 and .1304 of this Subchapter, seclusion and restraint shall be used only in a residential or inpatient service delivery site.

(c) Each Mental Health Program Director shall develop and implement policies and procedures regarding the use of emergency seclusion and restraint for clients and, if applicable, their use on a non-emergency basis. Such policies and procedures shall include provisions to ensure that:

- (1) areas used for the intervention provide for humane, secure, and safe conditions including ventilation, light, and room temperature consistent with the rest of the service delivery site;
- (2) attention is paid to the need for fluid intake and regular meals, bathing, exercise, and the use of a toilet. Such attention shall be documented in the client record; and
- (3) in residential and inpatient service delivery sites, each client is informed when seclusion or restraint is authorized for use as a part of his treatment regimen.
- (d) When seclusion or restraint has been used with the same client three or more times in a calendar month, an addendum to his treatment or habilitation plan shall be developed within ten

working days of the third intervention. The addendum shall include:

- (1) indication of need for the intervention;
- (2) specific description of the problem behavior;
- (3) specific early interventions to use as alternatives to seclusion or restraint; and
- (4) guidelines for discontinuation of the intervention.

(e) In addition to other observations, reviews, and documentation as required in Rules .1303 and .1304 of this Subchapter, each Mental Health Program Director shall review all uses of seclusion and restraint and investigate unusual patterns of utilization.

(f) Each Mental Health Program Director shall maintain a record which includes the following information regarding each use of seclusion and restraint:

- (1) client's name;
- (2) name of the responsible clinician;
- (3) date, time, and duration of each intervention; and
- (4) reason for the use of the intervention.

(g) The information as required in (f) of this Rule shall be reviewed by the Department on a monthly basis.

*Statutory Authority G.S. 148(d)(19).*

#### **.2603 USE OF SECLUSION**

(a) Seclusion may be used only under one of the following conditions:

- (1) on an emergency basis when it is believed necessary to prevent immediate harm to the client or to others; or
- (2) on a non-emergency basis when it is believed that seclusion will resolve the presenting situation or will produce the desired behavioral change.

(b) Emergency seclusion shall last no longer than is necessary to control the client. Consultation shall be made with a clinician within 12 hours of the initial seclusion. Within 24 hours, there shall be face-to-face evaluation by a responsible clinician.

(c) No use of seclusion shall exceed seven days without the review and approval of an internal committee in accordance with (e) of this Rule.

(d) Observations or reviews of all clients in seclusion shall be made as follows:

- (1) observations at least every 30 minutes, with the exception of those on suicide precautions who shall be checked every 15 minutes;
- (2) observations at least daily by a clinician or, when the clinician is not present at the

facility, observations by a health professional shall be reported by telephone with a clinician; and

- (3) reviews by an internal committee in accordance with (e) of this Rule.

(e) Committee review.

- (1) If it appears that seclusion may be indicated for a period to exceed seven days, an internal committee consisting of a clinician, a nurse or member of the medical staff, and a member of the administrative staff shall review the use of seclusion and interview the client. Continued use shall not exceed the initial seven days without the approval of this Committee.

- (2) Following its initial review, the Committee shall review the case at intervals not to exceed 30 days.

(f) When a client is placed in seclusion, his client record shall contain documentation of the following:

- (1) the rationale and authorization for the use of seclusion including placement in seclusion pending review by the responsible clinician;
- (2) a record of the observation of the client as required in (d)(1) of this Rule;
- (3) each review by the responsible clinician as required in (d)(2) of this Rule including a description of the client's behavior and any significant changes which may have occurred; and
- (4) each review by the internal committee as required in (e) of this Rule.

*Statutory Authority G.S. 148(d)(19).*

#### **.2604 USE OF RESTRAINT**

(a) Restraint shall be used only under the following circumstances:

- (1) after less restrictive measures such as counseling and seclusion have been attempted or when clinically determined to be inappropriate or inadequate to avoid such injury; and
- (2) after seclusion has failed or when such seclusion alone is determined to be insufficient to protect or control the client; and
- (3) upon the order of a clinician to control a client who has attempted, threatened, or accomplished harm to himself or others; or
- (4) upon the authorization of the officer-in-charge on an emergency basis when believed necessary to prevent immediate harm to the client or to others.

(b) Procedures for Restraint.

- (1) Except under the provisions of (c)(2) of this Rule, no client shall be restrained except by order of a clinician.
  - (2) When determining if restraint is indicated, a clinician shall consider:
    - (A) whether the client has inflicted an injury to himself or to others and, if so, the nature and extent of such injury; or
    - (B) whether the client, through words or gestures, threatens to inflict further injury and the manner and substance of the threat.
  - (c) When a client exhibits behavior indicating the use of restraints and under the conditions of (a) of this Rule, the following procedures shall be followed:
    - (1) If, in the judgment of any staff member, immediate restraint is necessary to protect the client or others, the client shall be referred immediately to a clinician for observation and treatment.
    - (2) If there is insufficient time to make the referral or if a clinician is not immediately available:
      - (A) the officer-in-charge may employ emergency use of restraint;
      - (B) within two hours of the initial restraint, the client shall be reviewed and a restraint order shall be issued by a clinician. This may be accomplished by telephone contact between the senior health professional at the facility and the clinician. If such review cannot be obtained, the client shall be released from restraint;
      - (C) a restraint order shall not exceed four hours. At the expiration of a restraint order, the client shall be released from restraint unless a new order is issued; and
      - (D) any subsequent order for continuing restraint shall be based on the client's condition and behavior at that time and shall not merely recite the original reasons for restraint without some indication of why the original reasons are considered applicable at the time of the subsequent order.
    - (d) Whenever the client is restrained and subject to injury by another client, a professional staff member shall remain present with the client continuously. Observations and interventions shall be documented in the client record.
    - (e) All orders for continuation of restraint shall be reviewed in writing no longer than four hour intervals thereafter, either by personal examination or telephone communication between health professionals and the responsible clinician.
    - (f) All orders of restraint issued or approved by a clinician shall include written authorization to correctional staff or health professionals to release the client when he is no longer dangerous to himself or others.
    - (g) The responsible clinician shall be notified upon release of a client from restraint.
    - (h) Observations or reviews of all clients in restraint shall be made as follows:
      - (1) observations at least every 30 minutes, with the exception of those on suicide precautions who shall be checked every 15 minutes;
      - (2) observations every four hours by the responsible clinician either personally or through reports from health professionals; and
      - (3) reviews by an internal committee in accordance with (i) of this Rule.
    - (i) Committee review. An internal committee consisting of three members of the Department's clinical and administrative staff, including at least one psychologist and one psychiatrist shall review cases in which restraints were used for therapeutic purposes beyond four hours. The incident will be reviewed and include consideration of the following:
      - (1) the use of appropriate procedures in the decision to restrain;
      - (2) sufficient indications for the use of restraint; and
      - (3) release of the client from restraint at the appropriate time.
    - (j) When a client is placed in restraint, his client record shall contain documentation of the following:
      - (1) the rationale and authorization for the use of restraint including placement in restraint pending review by the responsible clinician;
      - (2) a record of the observations of the client as required in (h) of this Rule;
      - (3) each review by the responsible clinician as required by this Rule including a description of the client and any significant changes which may have occurred; and
      - (4) each review by the internal committee as required in (i) of this Rule.
- Statutory Authority G.S. 148(d)(19).*
- .2605 PROTECTIVE DEVICES**
- (a) Whenever protective devices are utilized for clients, the Mental Health Program Director shall:
    - (1) ensure that the necessity for the protective device has been assessed and approved by a mental health professional. The device shall be applied by a person who has been

trained in the utilization of protective devices;

- (2) frequently observe the client and provide opportunities for toileting, exercise, etc. as needed. Protective devices which limit the client's freedom of movement shall be observed at least every two hours; and

- (3) document the utilization of protective devices in the client's medical record.

(b) In addition to the requirements specified in (a) of this Rule, protective devices used for behavioral control shall comply with the requirements specified in Rules .1302 and .1304 of this Subchapter.

*Statutory Authority G.S. 148(d)(19).*

#### **.2606 REFERRAL AND TRANSFER TO RESIDENTIAL OR INPATIENT UNITS**

(a) Only inmates who have diagnosable mental disorders and who are likely to benefit from mental health, mental retardation, and substance abuse treatment available at a residential or inpatient unit shall be referred and transferred.

(b) Only inmates who meet the following criteria shall be diagnosed as mentally retarded and referred and transferred to a residential unit for mentally retarded offenders:

- (1) an IQ of 69 or lower as measured by an individual intelligence test (i.e. Binet or WAIS-R); and
- (2) concurrent deficits or impairment in adaptive behavior.

(c) Only inmates who have a documented history of substance abuse or who are recommended by the Court shall be referred and transferred to a residential unit for substance abuse treatment.

(d) To the greatest extent possible, the transfer of clients to a residential or inpatient unit shall be voluntary on the part of the inmate.

(e) Referrals and transfers of inmates with mental illness or mental retardation shall occur only in accordance with the provisions of rules in this Subchapter.

*Statutory Authority G.S. 148(d)(19).*

#### **.2607 INMATE RIGHTS CONCERNING TRANSFER TO RESIDENTIAL OR INPATIENT UNITS**

All inmates who are considered for transfer to a residential or inpatient unit have the following rights:

- (1) written notice that transfer to a residential or inpatient mental health facility is being considered including a statement of the reasons for the referral or transfer;

- (2) a hearing sufficiently after notice is given to prepare objections, if any;

- (3) opportunity to testify in person, present documentary evidence, present witnesses and question witnesses called by the State, except upon a finding not arbitrarily made, of good cause for not permitting such presentation, confrontation, or cross-examination;

- (4) a neutral and independent decision maker who may be from within the prison system but who has the authority to refuse admission;

- (5) a written statement by the decision maker as to reasons for his decision to refer and transfer, with which two psychiatrists or psychologists concur;

- (6) qualified and independent assistance from an advisor, not necessarily an attorney, to assist the inmate in preparing his objections;

- (7) periodic review of the continuing need for treatment; and

- (8) effective and timely notice of all of the rights in this Rule.

*Statutory Authority G.S. 148(d)(19).*

#### **.2608 VOLUNTARY REFERRALS AND TRANSFERS**

(a) Non-emergency referrals shall be forwarded to the mental health or mental retardation professional designated to receive such referrals at the service delivery site to which the inmate is assigned.

(b) If the mental health, mental retardation, or substance abuse professional determines that the inmate is in need of services provided at a residential or inpatient unit, the inmate will be given written notice of the reasons for the referral, the expected benefits of the treatment to be received, and his rights as described in Rule .1308 of this Subchapter.

(c) If the inmate agrees to a voluntary transfer to the specified residential or inpatient unit, he will be asked to give written consent with witness by a member of the staff. If the inmate refuses to sign the form yet verbally agrees, this fact must be documented by two witnesses prior to initiating the transfer to the mental health unit.

(d) The referring mental health or mental retardation professional shall complete the necessary referral forms and arrange for the inmate's transfer.

*Statutory Authority G.S. 148(d)(19).*

#### **.2609 INVOLUNTARY REFERRALS AND TRANSFERS**

(a) Referrals and transfers on an involuntary basis shall occur only when an inmate requires treatment services not available at his current service delivery site and a transfer over his objections is required.

(b) Non-emergency involuntary referrals. If, in the judgment of the mental health or mental retardation professional, an inmate requires services provided at another residential or inpatient unit, the professional shall give the inmate a written notice of referral for transfer and explain his rights in accordance with Rule .1308 of this Subchapter. If the inmate does not voluntarily consent to the referral and transfer, the following steps shall be taken:

- (1) the inmate shall be provided with the time, date and place of a hearing;
- (2) the Mental Health Program Director or his designee shall contact the hearing officer to arrange a hearing; and
- (3) an inmate advisor shall be appointed and a hearing conducted in accordance with the procedures specified in the rules of this Subchapter.

(c) Emergency involuntary referrals.

- (1) Emergency procedures may be implemented only when an inmate is mentally ill; and
  - (A) presents a substantial risk of harm to himself or others as manifested by recent overt acts or recent expressed threats of violence which present a probability of physical injury to himself or to other persons; or
  - (B) is so unable to care for his own personal health and safety as to create a substantial risk of harm to himself.
- (2) Emergency referrals shall be made by the mental health staff or the unit physician, nurse, or officer in charge after consultation with the appropriate mental health staff of the receiving unit. The officer in charge shall authorize a transfer only under the following conditions:

- (A) in his opinion, the emergency referral criteria exists; and
- (B) reasonable efforts to contact a mental health professional have failed.

(d) An inmate who is transferred because he meets the criteria of an emergency will be afforded a hearing at the receiving unit within ten days of admission. This hearing will follow the same procedures as those outlined in Rules .1308 and .1309 through .1312 of this Subchapter.

*Statutory Authority G.S. 148(d)(19).*

#### **.2610 HEARING OFFICERS**

(a) The Chief of Mental Health Services shall recommend and the Director of the Division of Prisons shall appoint sufficient numbers of persons to serve as hearing officers.

(b) Hearing officers shall be qualified, neutral, and independent and shall have the authority to refuse to transfer an inmate when in his judgment such a transfer is not justified.

(c) Hearing officers shall:

- (1) ensure that an inmate advisor has been assigned and document this accordingly;
- (2) conduct a hearing that follows the procedures as specified in this Subchapter in a fair and impartial manner; and
- (3) determine from evidence presented whether the following criteria are met:
  - (A) the inmate has a diagnosable mental disorder; and
  - (B) a transfer to the designated unit is reasonable in view of the inmate's treatment or habilitation needs and the benefits expected from the transfer.

*Statutory Authority G.S. 148(d)(19).*

#### **.2611 INMATE ADVISORS**

(a) Each inmate referred for a hearing shall have an advisor appointed to assist him in preparing for the hearing.

(b) Each area administrator or institution head shall be responsible for appointing advisors for all units within his jurisdiction.

(c) Inmate advisors shall be free to advise the inmate independently and to act solely in his behalf and shall not be subject to any harassment, discipline, or pressure in connection with such advice for the inmate.

(d) Ex parte attempts to influence the decision of the hearing officer are prohibited.

*Statutory Authority G.S. 148(d)(19).*

#### **.2612 HEARING PROCEDURES**

(a) The hearing shall be conducted no sooner than 48 hours from the time the inmate is given written notice that he is being considered for a referral to a residential or inpatient unit; however, the inmate has the right to waive the 48-hour notice.

(b) The Hearing Officer shall determine the time, place and site of the hearing after considering the relevant factors.

(c) The referring psychologist or psychiatrist shall present sufficient testimony and written evidence at the hearing to show that:

- (1) the inmate has a diagnosable mental disorder;



- (2) the inmate requires services that are not currently available on an outpatient basis; and
- (3) the unit to which the inmate is to be transferred is better able to provide the needed treatment habilitation services than is the currently assigned housing unit.

(d) A copy of the referral form as well as other relevant written documents may be entered as evidence. All written documents or verbal information is to be considered confidential in accordance with client records policy. The inmate shall not have direct access to his client record. However, the advisor may review all client record presented at the hearing and may consult with the inmate about their use at the hearing and about any matters therein which could be relevant at the hearing, including the questioning of all witnesses.

(e) The inmate being considered for transfer or his advisor may question any witnesses for the State including mental health or mental retardation professionals. The inmate may also present witnesses on his own behalf with the following limitations:

- (1) a reasonable number of witnesses will be allowed at the discretion of the Hearing Officer;
- (2) testimony may be received by conference telephone call if the hearing is conducted away from the inmate's assigned unit;
- (3) written statements may be entered in lieu of direct testimony; and
- (4) specific inmate witnesses may be excluded from direct testimony if a justifiable security risk would occur were they brought to the hearing site.

(f) The Hearing Officer shall document the results of the hearing, clearly summarizing the evidence presented and the rationale for his decision. The results of the hearing will be communicated to the inmate and concerned staff and a copy of relevant documents placed in the client record. A copy of the report will be filed in the appropriate administrative records.

(g) Two psychiatrists or psychologists, one of which must be located at the receiving unit, shall concur with the hearing officer's decision.

(h) The decision to transfer involuntarily is valid throughout the duration of the stay at any residential or inpatient unit with required 30-day reviews of the need for continued treatment or habilitation. An inmate may be transferred to another like unit without a rehearing, but if he is discharged from residential or inpatient services, a rehearing is required prior to readmission to that level of service.

(i) At the request of the inmate, his case shall be reviewed by a Hearing Officer within 90 days after the initial hearing to determine whether the assignment to the residential or inpatient unit shall be extended or terminated. Subsequent reviews thereafter shall take place each 180 days if requested by the inmate.

*Statutory Authority G.S. 148(d)(19).*

## SECTION .2700 - RESEARCH PRACTICES

### .2701 SCOPE

The standards in this Section apply to each service delivery site and to any other provider of services on a contractual basis which are involved in research activities. This shall include research which:

- (1) involves practice that is not standard or conventional;
- (2) involves a trial or special observation which would place the client at risk for injury (physical, psychological or social injury), or increase the chance of disclosure of treatment;
- (3) utilizes elements or steps not ordinarily employed by qualified professionals treating similar disorders of this population; or
- (4) is a type of procedure that serves the purpose of the research only and does not include treatment designed primarily to benefit the client.

*Statutory Authority G.S. 148(d)(19).*

### .2702 RESEARCH REVIEW BOARD

(a) Each research activity which involves clients in research activities shall be reviewed and approved by a research review board established by the Department prior to the initiation of the research project. The research review board is a group comprised of at least five members which has the authority to approve, require modification, or disapprove proposed research projects subject to the approval of the Department. Individuals not directly associated with research projects under consideration shall comprise a majority of the review board.

(b) Each proposed research project shall be presented to a research review board as a written protocol containing the following information:

- (1) identification of project and investigator;
- (2) abstract, containing a short description of the project;
- (3) statement of objectives and rationale; and
- (4) description of methodology, including informed consent if necessary.

(c) Prior to the initiation of each research project, a research review board shall:

- (1) conduct an initial review of the project;
- (2) state the frequency with which it will review the project after it has been initiated; and
- (3) hold a review prior to any major changes being made in research procedures.

(d) Written minutes of each research board's meeting shall be maintained and contain documentation that:

- (1) risks to clients were minimal and reasonable for the benefits to be accrued;
- (2) client participation was voluntary and not a condition of receipt of inappropriate inducements;
- (3) unnecessary intrusion on clients was eliminated;
- (4) informed consent was appropriately provided for; and
- (5) confidentiality of clients was protected.

*Statutory Authority G.S. 148(d)(19).*

#### **.2703 CONDITIONS OF CLIENT PARTICIPATION**

Informed written consent shall be obtained from each client in a research project as follows:

- (1) clients shall be informed of any potential dangers or risks that may exist as a result of participation;
- (2) clients shall be informed as to what their participation will entail as related to time and effort, future follow-up, contacts with other people about them, and alterations of regular procedures;
- (3) documentation shall be made that the clients have been informed of any potential dangers that may exist and that they understand the conditions of participation;
- (4) each client shall have the right to terminate participation at any time without prejudicing the treatment he is receiving; and
- (5) a copy of the dated, signed consent form shall be kept on file by the Mental Health Program Director or Substance Abuse Program Director.

*Statutory Authority G.S. 148(d)(19).*

### **SECTION .2800 - EMERGENCY SERVICES**

#### **.2801 SCOPE**

(a) Emergency mental health, mental retardation, and substance abuse services shall be available to all inmates.

(b) Emergency services are services which provide immediate assessment and intervention as

well as referral for continuing care after emergency treatment for inmates experiencing acute emotional or behavioral problems or problems resulting from the abuse of alcohol or other drugs. Emergency services may consist of a variety of services such as crisis intervention, telephone crisis services, and medical and psychiatric back-up.

*Statutory Authority G.S. 148(d)(19).*

#### **.2802 PROVISION OF SERVICES**

Emergency services shall be provided 24 hours per day, seven days per week, 12 months per year as follows:

- (1) In outpatient service sites, emergency services shall be available through one or more of the following:
  - (a) a prioritized on-call list;
  - (b) referral to a local facility providing emergency services, as needed; or
  - (c) referral to residential and inpatient services.
- (2) In residential and inpatient service sites, emergency services shall be available through one or more of the following:
  - (a) 24-hour access to personnel trained in emergency services;
  - (b) 24-hour telephone coverage;
  - (c) provision for emergency hospital services; and
  - (d) provision of emergency back-up or consultation by a qualified mental health professional and a qualified alcoholism, drug abuse or substance abuse professional.

*Statutory Authority G.S. 148(d)(19).*

#### **.2803 TRAINING OF STAFF**

(a) Each prison unit shall have staff trained to access and refer to emergency services.

(b) Staff providing emergency services shall be trained in the following:

- (1) available resources;
- (2) interviewing techniques;
- (3) characteristics of substance abuse, mental retardation and mental illness;
- (4) crisis intervention;
- (5) making referrals; and
- (6) commitment procedures.

*Statutory Authority G.S. 148(d)(19).*

#### **.2804 REVIEW AND FOLLOW-UP OF EMERGENCY SERVICES PROVIDED**

At least one staff member of the Department shall be designated to coordinate and supervise activities of the emergency mental health services

network. This person shall review emergency services records to assure that arrangements with treatment or habilitation staff are made for follow-up services.

*Statutory Authority G.S. 148(d)(19).*

#### SECTION .2900 - PREVENTION SERVICES

##### .2901 SCOPE

(a) Prevention services shall include information, consultation, education and instruction for the custody staff and general population of the prison system and should be based on the following philosophy:

- (1) recognition of the need to promote broad health concepts and to increase inmate and custody staff understanding of the nature of mental illness, mental retardation and substance abuse;
- (2) recognition of the need to identify high risk factors and responses to problems related to mental illness, mental retardation and substance abuse; and
- (3) commitment to early detection to reduce or eliminate the incidence of mental illness, mental retardation and substance abuse while enhancing the self-worth and coping skills of the inmate.

(b) Prevention services shall direct their activities and services to avoid the onset of mental dysfunctioning and to strengthen, protect and maintain social, physical, and psychological functioning of the prison population.

*Statutory Authority G.S. 148(d)(19).*

##### .2902 RECORDS

(a) Records shall be maintained of all prevention activities for the purpose of program monitoring and evaluation, and shall include the following:

- (1) name of group and pertinent characteristics of these recipients;
- (2) date, time, and number of staff hours involved;
- (3) staff member responsible;
- (4) number of persons served in each activity;
- (5) topics covered, addressed, and focused upon during group presentations; and
- (6) recipient feedback and evaluation of group presentations.

(b) Records shall be maintained for a minimum of two years.

*Statutory Authority G.S. 148(d)(19).*

#### SECTION .3000 - INPATIENT SERVICES FOR INMATES WHO ARE MENTALLY ILL

##### .3001 SCOPE

(a) Inpatient units for clients who are mentally ill shall provide 24-hour-per-day inpatient treatment services and close supervision under the clinical direction of a psychiatrist.

(b) The inpatient shall be designed to serve clients who require continuous treatment for moderate or severe mental illness. Individuals who, in addition to mental illness, have other disorders such as mental retardation or substance abuse, shall be eligible for admission.

*Statutory Authority G.S. 148(d)(19).*

##### .3002 HOURS OF OPERATION

The inpatient unit shall provide services 24 hours per day, seven days per week, 12 months per year.

*Statutory Authority G.S. 148(d)(19).*

##### .3003 STAFF REQUIRED

(a) Staff shall include at least one of each of the following: psychiatrist, psychologist, psychiatric social worker and psychiatric nurse.

(b) The services of a qualified mental health professional shall be available on a 24-hour basis.

(c) Physician coverage shall be available on a 24-hour basis.

(d) On-call staff shall be readily available by telephone or page.

*Statutory Authority G.S. 148(d)(19).*

##### .3004 ADMISSION ASSESSMENTS

(a) A physical examination and social history shall be completed for each client within 30 days prior to admission or upon admission. Additional assessments shall be completed as indicated.

(b) In the case of an emergency admission of a client, the admission assessment shall be completed within three days following admission.

*Statutory Authority G.S. 148(d)(19).*

#### CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

##### SUBCHAPTER 18F - PROGRAM SUPPORT STANDARDS

#### SECTION .0100 - TRAINING AND REGISTRATION OF FORENSIC EVALUATORS

##### .0115 SCOPE

(a) The purpose of Rules .0115 through .0122 of this Section is to specify the requirements that shall be met to be registered as a forensic ~~screen~~

~~ing examiner~~ evaluator by the Division of Mental Health, ~~Mental Retardation~~ Developmental Disabilities and Substance Abuse Services.

(b) The provisions of Rules .0115 through .0122 of this Section apply to any qualified mental health professional seeking registration as a forensic screening examiner evaluator by the Division.

Statutory Authority G.S. 15A-1002; 143B-147.

#### .0116 DEFINITIONS

For the purposes of Rules .0115 through .0122 of this Section the following terms shall have the meanings indicated:

- (1) "Forensic Screening Examination Evaluation" means an examination ordered by the court of a defendant to determine if the defendant has the capacity to proceed to trial, or if a forensic evaluation is necessary to make such a determination, needs further treatment at an inpatient facility or further evaluation at the Pre-Trial Evaluation Center.
- (2) "Forensic Evaluation" means an examination by a person deemed a medical expert by the court to determine if a defendant has the capacity to proceed to trial.
- (2) (3) "Qualified Mental Health Professional" means a qualified mental health professional who meets the appropriate qualifications outlined for such professionals as referenced in 10 NCAC 48A .0803 181 .0120(71) in the Standards for Area Programs (Division publication APSM 35-1) and defined in 10 NCAC 14K .0103(68) "Licensure Rules for Mental Health, Mental Retardation, and Other Developmental Disabilities and Substance Abuse Facilities" (APSM 40-2).
- (4) "Forensic Services" means the program unit of the Mental Health Section of the division responsible for providing leadership and technical assistance in planning, developing, implementing, and coordinating of forensic services in division institutions and area programs.
- (3) "Pre-Trial Evaluation Center" means the forensic unit at Dorothea Dix Hospital.

Statutory Authority G.S. 15A-1002; 143B-147.

#### .0117 ELIGIBILITY FOR TRAINING

(a) To be eligible for registration training as a forensic screening examiner evaluator the applicant shall:

- (1) be a qualified mental health professional; ~~or a licensed psychological associate;~~

(2) be an employee of, or work under contract with, an area program; and

(3) have his ~~her~~ name submitted as an applicant for the training ~~and~~ registration program by the area director.

(b) ~~Forensic Services~~ The area program shall verify that the applicant meets the appropriate standards for a qualified mental health professional that are referenced in Rule .0116 (3) (2) of this Section.

Statutory Authority G.S. 15A-1002; 143B-147.

#### .0118 TRAINING AND REGISTRATION

The applicant shall successfully complete ~~four~~ hours of training covering procedure, techniques, and reporting that is provided by ~~Forensic Services, the Mental Health Section of the Division in order to be registered as a forensic evaluator.~~

Statutory Authority G.S. 15A-1002; 143B-147.

#### .0119 PERIOD OF REGISTRATION

Registration ~~may be for a period of up to two years. Expiration of registrations shall occur on June 30.~~ shall continue to be valid unless registration is terminated as specified in Rule .0121 of this Section.

Statutory Authority G.S. 15A-1002; 143B-147.

#### .0120 RE-REGISTRATION (REPEALED)

Statutory Authority G.S. 15A-1002; 143B-147.

#### .0121 TERMINATION OF REGISTRATION

A Forensic Screening Examiner Evaluator Registration will be declared void when:

- (1) the ~~examiner~~ evaluator no longer desires to be registered and perform the duties required by an ~~examiner~~ evaluator;
- (2) the ~~examiner~~ evaluator is no longer employed by, or under contract with, an area program; or
- (3) the ~~examiner~~ evaluator no longer meets the registration requirements.

Statutory Authority G.S. 15A-1002; 143B-147.

#### .0122 DUTIES OF REGISTERED FORENSIC EVALUATOR

(a) When ordered by the court, the ~~examiner~~ evaluator shall conduct forensic evaluation or a screening examination of the ~~alleged~~ defendant and report to the court in accordance with G.S. 15A-1002 whether:

- (1) there is sufficient question of mental or emotional disorder to ~~pur-sue an evaluation;~~

recommend inpatient evaluation or treatment; or

- (2) there is sufficient information to indicate recommend that the alleged defendant does have capacity to proceed and further evaluation is not indicated.

~~(b) A forensic screening examiner may not perform forensic evaluations unless he/she is also deemed a medical expert by the court.~~

*Statutory Authority G.S. 15A-1002; 143B-147.*

#### SUBCHAPTER 18M - REQUIRED SERVICES

#### SECTION .1300 - FORENSIC SCREENING AND EVALUATION SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

##### .1303 FORENSIC SCREENING AND EVALUATION

Forensic screening and evaluation to assess capacity to ~~stand~~ proceed to trial shall be provided by ~~examiners~~ evaluators trained and registered in accordance with the provisions of 10 NCAC 18F .0115 through .0122; ~~TRAINING AND REGISTRATION OF FORENSIC SCREENING EXAMINERS EVALUATORS~~ (Division publication APSR 100-3).

*Statutory Authority G.S. 15A-1002; 143B-147.*

### TITLE II - DEPARTMENT OF INSURANCE

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 10 .1105.*

*The proposed effective date of this action is May 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on February 15, 1990 at Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Comment Procedures: Written comments may be sent to Pete Murdza, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Pete Murdza at (919) 733-3284 or Linda Stott at (919) 733-4700.*

#### CHAPTER 10 - FIRE AND CASUALTY DIVISION

##### SECTION .1100 - RATE FILINGS

##### .1105 OTHER RATE BUREAU LINES

The information required by N.C.G.S. 58-124.20(h) shall be presented as follows:

(NOTE: If the data required by this Regulation are not being collected or reported, or are not readily available to insurers prior to April 1, 1990, the insurers shall commence collecting or reporting such data beginning on January 1, 1991. If certain data are not regularly collected through the statistical plan, a special call for that data to companies whose aggregate written premium is at least three-fourths of the total written premium of the coverages affected by the filing may be substituted. Thereafter, such required data as have accrued shall be included in each filing until enough data are available to satisfy fully this Regulation. If in addition to the full years of data specified in any of the below requests, more recent data of less than a full year are available, that data shall also be provided. If updates to the information requested below become available after a filing is made but before a decision is reached on it, they should also be provided.)

- (1) North Carolina premium, loss and loss adjustment experience:
  - (a) Include all available premium, loss, and loss adjustment expense, and exposure data from all companies writing a coverage affected by the filing. If the experience of any company that writes more than two percent of the North Carolina written premium of the coverage affected by the filing has been excluded from any rate level, trend, loss development, relativity, or investment income calculations for that coverage, identify the company and its market share and provide an explanation for its exclusion. Also estimate the aggregate market share of other companies whose experience is excluded from such calculations.
  - (b) Include all available expense data from all companies writing a coverage affected by the filing. If the experience of any of the 60 largest countrywide writers of the coverages affected by the filing (excluding companies not writing in North Carolina) is excluded from any expense level calculation, identify the company and its market share and provide an explanation for its exclusion. Also estimate the aggregate market share of other companies whose experience is excluded from such calculations.
  - (c) In filings producing an overall rate level change for farmowners policies, use only the experience from coverages under the

- jurisdiction of the North Carolina Rate Bureau when calculating that change. Indicate if and how non-Bureau data has been segregated and if and how such data has affected any aspect of the filing (e.g., trend, expense provisions, etc.).
- (d) Clearly describe all adjustments to premiums, losses, loss adjustment expense, and exposures included in the filing. Show the unadjusted amounts to which adjustments were made, identify the specific adjustments, provide details on the derivation and application of the adjustment factors, and describe all intermediate calculations.
  - (e) For each coverage for which premium at present rates is calculated, indicate how such calculations were undertaken, supply supporting documentation for a sample of the calculations, and justify all aggregate factors used.
  - (f) In filings producing an overall rate level change for either homeowners or farmowners policies, provide composite loss and premium information from each of the latest two Annual Statements for the fifty largest writers (based on North Carolina written premium) of the coverages affected by the filing including the following:
    - (i) Underwriting and Investment Exhibit, Part 2;
    - (ii) Underwriting and Investment Exhibit, Part 3A;
    - (iii) North Carolina Page 14.
 For homeowners filings, provide the information on line 4; for farmowners filings, the information on line 3.
  - (g) Provide the latest written and earned premiums and market shares for the ten largest writers (based on North Carolina written premium) of the coverages affected by the filing.
  - (h) Provide to the extent possible the following information on companies deviating from Bureau rates, by coverage, for each of the latest five years:
    - (i) A list of all deviating companies;
    - (ii) The total amount of deviations in dollars;
    - (iii) The average percentage deviation for all companies.
  - (i) In filings affecting either homeowners or farmowners policies, provide the following information on dividends on policies affected by the filing:
    - (i) A list of all companies issuing dividends;
    - (ii) The total amount of dividends in dollars;
    - (iii) The average percentage dividend for all companies.
  - (j) In filings producing an overall rate level change, provide the following information, by coverage, for each year of loss experience used in calculating that change:
    - (i) Paid losses and number of paid claims;
    - (ii) Case basis reserves and number of outstanding claims;
    - (iii) Applied loss development factor;
    - (iv) Loss adjustment expense factor;
    - (v) Applied trend factor;
    - (vi) Trended incurred losses and LAE.
  - (k) If data from monoline coverages is used in the determination of package rate levels or vice versa, provided to the extent possible the following information:
    - (i) A clear description of the differences between the types of data;
    - (ii) A description of which causes of loss are included or excluded;
    - (iii) Information on whether both types of experience are for the same companies;
    - (iv) Comparable loss data for all years included in the filing, if available. (For example, if monoline experience before a certain date supplements package experience after that date, also include the monoline experience after that date.)
  - (l) Whenever North Carolina losses are separated into excess (catastrophe) and non-excess (noncatastrophe) losses, provide a clear description and justification of the standard used to separate such losses. In determining an excess (catastrophe) loading, include as many years of data as possible. If the number of years included differs from the number available, provide an explanation. Also provide an explanation if the data from which the excess loading is derived differs from that on which the rate level change is based.
  - (m) In filings producing an overall rate level change, provide loss data by cause of loss in as much statistical detail as is available for each year used in calculating that change and describe any adjustment procedures or factors applied to the separated data.
  - (2) Credibility factor development and application. Provide all information related to the derivation of credibility factors contained in the filing including the following:
    - (a) A description of all data reviewed and all worksheets used;
    - (b) A complete description of the methodology used to derive the factors;

- (c) A description of alternative methodologies used or considered for use in the last three years;
- (d) A description of the criteria used to select a methodology;
- (e) Specific details on the application of these criteria in the selection of a methodology for the filing;
- (f) Details on the application of the methodology to the filing.
- (3) Loss development factor development and application. In filings producing an overall rate level change for either homeowners or farmowners policies, provide the following:
  - (a) All information related to the derivation of the loss development factors contained in the filing including the following:
    - (i) A description of all data reviewed and all worksheets used;
    - (ii) A complete description of the methodology used to derive the factors;
    - (iii) A description of alternative methodologies used or considered for use in the last three years;
    - (iv) A description of the criteria used to select a methodology;
    - (v) Specific details on the application of these criteria in the selection of a methodology for the filing;
    - (vi) Details on the application of the methodology to the filing.
  - (b) Complete (including the upper left portion) total limits paid loss development triangles for matching policies by coverage for the ten latest available accident years at all available development points and also the loss development factors and five-year average factors derivable from these triangles.
  - (c) The same information in Subsection (b) for basic limits incurred losses.
  - (d) The same information in Subsection (b) for the number of paid claims.
  - (e) The same information in Subsection (b) for the number of outstanding claims.
  - (f) If available, the information in Subsections (b), (c), (d), and (e) by cause of loss.
  - (g) Statements regarding any reserve strengthening during the last five years from each of the ten largest writers (based on North Carolina written premium) of the coverages affected by the filing.
- (4) Trending factor development and application:
  - (a) Provide all information relating to the derivation of the loss trend factors contained in the filing including the following:
    - (i) A description of all data reviewed and all worksheets used;
    - (ii) A complete description of the methodology used to derive the factors;
    - (iii) A description of alternative methodologies used or considered for use in the last three years;
    - (iv) A description of the criteria used to select a methodology;
    - (v) Specific details on the application of these criteria in the selection of a methodology for the filing;
    - (vi) Details on the application of the methodology to the filing.
  - (b) In filings producing an overall rate level change for either homeowners or farmowners policies, provide the exposure distribution by policy term for each of the latest five years and estimate any changes to those distributions expected during the effective period of the proposed rates.
- (6) Limiting factor development and application. Provide information on the following items:
  - (a) Limitations on the losses included in the statistical plans used in the filing;

- (b) Limitations on the extent of the rate level change by coverage;
- (c) Limitations on the extent of territorial rate changes;
- (d) Any other limitations.
- (7) Expenses:
  - (a) Provide all information relating to the derivation of expense provisions contained in the filing including the following:
    - (i) A description of all data reviewed and all worksheets used;
    - (ii) A complete description of the methodology used to derive the factors;
    - (iii) A description of alternative methodologies used or considered for use in the last three years;
    - (iv) A description of the criteria used to select a methodology;
    - (v) Specific details on the application of these criteria in the selection of a methodology for the filing;
    - (vi) Details on the application of the methodology to the filing.
  - (b) In filings producing an overall rate level change for either homeowners or farmowners policies, provide earned premium and unallocated loss adjustment expenses by coverage for each of the latest five years.
  - (c) In filings producing an overall rate level change for either homeowners or farmowners policies, provide statements regarding any expense cutting activities undertaken in the last five years by each of ten largest writers (based on North Carolina written premium) of the coverages affected by the filing.
- (8) The percent rate change. Provide the statewide rate change by coverage and by deductible.
- (9) Proposed rates. Provide the proposed average rates for each coverage, coverage amount, form, and group. (In filings involving a large number of possible rates, information on rating factors and their application may be substituted for the actual rates.)
- (10) Investment earnings. In filings producing an overall rate level change for either homeowners or farmowners policies, information on anticipated investment income is necessary to establish the provisions for underwriting profit and contingencies in the rates.
  - (a) Calculate or estimate the amount of investment income earned on loss, loss expense, and unearned premium reserves as a percentage of earned premium, by coverage, for each of the two most recent years, for the current year, and for all years during the effective period of the rates. Provide the details of such calculations including the amount of the composite reserves of each type at the beginning and at the end of each of the specified years.
  - (b) To evaluate recent insurer profitability, provide composite information from each of the latest two Annual Statements for the 50 largest writers (based on North Carolina written premium) of the coverages affected by the filing including the following:
    - (i) Page 2 (Assets);
    - (ii) Page 3 (Liabilities, Surplus and Other Funds);
    - (iii) Page 4 (Underwriting and Investment Exhibit);
    - (iv) Insurance Expense Exhibit, Part II, the columns that are affected by the filing.
- (11) Identification and Certification of Statistical Plans:
  - (a) Identify all statistical plans used or consulted in preparing the filing and describe the data compiled by each plan.
  - (b) Provide a certification that there is no evidence that the data collected in accordance with such statistical plans and used in the filing are not true and accurate representations of each company's experience to the best of that company's knowledge.
- (12) Investment Earnings on Capital and Surplus. In filings producing an overall rate level change for either homeowners or farmowners policies, calculate the resulting rates of return on equity capital and on total assets produced by the selected underwriting profit and contingencies loadings. Show the derivation of all factors used in these calculations and justify the fairness and reasonableness of these rates of return.
- (13) Level of Capital Surplus Needed. In filings producing an overall rate level change, include information on the needed level of capital surplus including the following:
  - (a) Aggregate premium to surplus ratios for each of the latest three calendar years for all writers of the coverages affected by the filing.
  - (b) Estimates of comparable ratios for the effective period of the rates.
- (14) Other Information:
  - (a) Provide all information related to the derivation of the profit and contingency loadings contained in the filing including the following:



- (i) A description of all data reviewed and all worksheets used;
- (ii) A complete description of the methodology used to derive the factors;
- (iii) A description of alternative methodologies used or considered for use in the last three years;
- (iv) A description of the criteria used to select a methodology;
- (v) Specific details on the application of these criteria in the selection of a methodology for the filing;
- (vi) Details on the application of the methodology to the filing.
- (b) In filings producing an overall rate level change for either homeowners or farm-owners policies, provide agendas and minutes of meetings of the North Carolina Rate Bureau affecting the filing and a list of all attendees at these meetings, their titles, and their affiliations.
- (c) In filings producing an overall rate level change for either homeowners or farm-owners policies, describe all payments to any consultants (including lawyers, actuaries, and economists) related to the current and previous filing of the same type. If payments are not specifically identified as relating to particular filings, estimate them.

*Statutory Authority G.S. 58-9; 58-124.20(h).*

## **TITLE 12 - DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Private Protective Services Board intends to amend rule(s) cited as 12 NCAC 7D .0202, .0702, .0802.*

*The proposed effective date of this action is July 1, 1990.*

*The public hearing will be conducted at 12:00 noon on February 16, 1990, at Duke Power Center, 500 South Church Street, Charlotte, N.C. 28202.*

*Comment Procedures: All written comments must be filed with the Administrator 10 days prior to the meeting. All persons wishing to attend the meeting to make comments must contact the Administrator 10 days prior to the meeting in order to be placed on the agenda.*

### **CHAPTER 7 - PRIVATE PROTECTIVE SERVICES**

#### **SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICES BOARD**

##### **SECTION .0200 - LICENSES: TRAINEE PERMITS**

##### **.0202 FEES FOR LICENSES AND TRAINEE PERMITS**

- (a) Application, license and trainee permit fees are as follows:
  - (1) one hundred and fifty dollars (\$150.00) non-refundable application fee;
  - (2) ~~one hundred and fifty dollars (\$150.00)~~ two hundred dollars (\$200.00) annual fee for a new or renewal license;
  - (3) ~~one hundred and fifty dollars (\$150.00)~~ two hundred dollars (\$200.00) annual trainee permit fee;
  - (4) fifty dollars (\$50.00) new or renewal fee for each license in addition to the basic license;
  - (5) twenty five dollars (\$25.00) duplicate license fee;
  - (6) one hundred dollars (\$100.00) late renewal fee in addition to the renewal fee;
  - (7) one hundred dollars (\$100.00) temporary license fee; and
  - (8) fifty dollars (\$50.00) branch office license fee.
- (b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

*Statutory Authority G.S. 74C-9.*

##### **SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)**

##### **.0702 FEES FOR UNARMED SECURITY GUARD REGISTRATION**

- (a) Registration fees are as follows:
  - (1) ~~ten dollars (\$10.00)~~ twenty dollars (\$20.00) non-refundable initial registration fee;
  - (2) ~~ten dollars (\$10.00)~~ twenty dollars (\$20.00) annual renewal, or reissue fee; and
  - (3) ~~seven dollars and fifty cents (\$7.50)~~ ten dollars (\$10.00) transfer fee.
- (b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

*Statutory Authority G.S. 74C-9.*

##### **SECTION .0800 - SECURITY OFFICER REGISTRATION (ARMED)**

##### **.0802 FEES FOR ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

- (a) Registration fees are as follows:

- (1) ~~seventeen dollars and fifty cents (\$17.50)~~ thirty dollars (\$30.00) non-refundable initial registration fee; and
- (2) ~~seventeen dollars and fifty cents (\$17.50)~~ thirty dollars (\$30.00) annual renewal, or reissue fee.

(b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

*Statutory Authority G.S. 74C-9.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Alarm Systems Licensing Board intends to amend rule(s) cited as 12 NCAC 11 .0202, .0301 and adopt rule(s) cited as 12 NCAC 11 .0207, .0401 - .0403.*

*The proposed effective date of this action is June 1, 1990.*

*The public hearing will be conducted at 12:00 noon on March 13, 1990 at McKimmon Center, Western Boulevard and Gorman Street, Raleigh, N.C.*

*Comment Procedures: All written comments must be filed with the Administrator by 5:00 p.m. 10 days prior to the hearing. All written requests to be placed on the agenda must be filed with the Administrator by 5:00 p.m. 10 days prior to the hearing.*

## CHAPTER 11 - N.C. ALARM SYSTEMS LICENSING BOARD

### SECTION .0200 - PROVISIONS FOR LICENSEES

#### .0202 EXPERIENCE REQUIREMENTS FOR LICENSE

(a) Applicants for an alarm system license must meet the following minimum requirements which are additional to those specified in G.S. Chapter 74D:

- (1) Establish to the Board's satisfaction two year's experience within the past five years in an alarm systems business as defined in G.S. 74D-2(a); alarm systems installation and service or;
- (2) Successfully pass an oral or written examination deemed by the Board to measure an individual's knowledge and competence in the alarm systems business; and

- (3) Successfully complete and maintain either the SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors.

(b) Applicants engaged exclusively in monitoring or responding to alarms may be issued a limited license which authorizes the performance of monitoring and responding functions only. Applicants for such a limited license shall not be required to meet the experience requirements of 12 NCAC Chapter 11 .0202(a).

*Statutory Authority G.S. 74D-5(a)(2).*

#### .0207 LICENSE REQUIREMENTS

All licensees must inform the Board at all times of their home address, business address, home telephone number and business telephone number.

*Statutory Authority G.S. 74D-5(a)(1).*

### SECTION .0300 - PROVISIONS FOR REGISTRANTS

#### .0301 APPLICATION FOR REGISTRATION

(a) Each employer or his designee shall submit and sign an application form for the registration of his employee on a form provided by the Board. This form, when sent to the board, shall be accompanied by a set of classifiable fingerprints on a standard F.B.I. applicant card, two recent photographs of acceptable quality for identification one inch by one inch in size, statements of the results of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding ~~24~~ 48 months and the registration fee required by 12 NCAC Chapter 11 .0302.

(b) The employer of an applicant who is currently registered with another alarm business, shall complete an application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee.

(c) The employer of each applicant for registration shall retain a copy of the applicant's application in the individual applicant's personnel file in the employer's office. Provided all required documents, properly completed, have been submitted to the Board upon or before the beginning of employment, the employer of each applicant for registration may give the applicant a copy of the application for the employee to use until his registration card is received.

*Statutory Authority G.S. 74D-8.*

**SECTION .0400 - RECOVERY FUND**

**.0401 DEFINITIONS**

In addition to the definitions under Article 2 of Chapter 74D of the General Statutes of North Carolina, the following definitions shall apply through this Section:

- (1) "Board" means the Alarm Systems Licensing Board.
- (2) "Fund" means the Recovery Fund of the Alarm Systems Licensing Act.
- (3) "Aggrieved Party" means a person who has suffered a direct or monetary loss because of a licensee's acts.
- (4) "Licensee" means a person who, at the time of the act complained of, was licensed by the Alarm Systems Licensing Board.
- (5) "Reimbursable Loss" means:
  - (a) only those losses of money or other property which meet all of the following tests:
    - (i) The obligation was incurred on or after July 1, 1983;
    - (ii) The loss was caused by a licensee defaulting on an obligation owed where such obligation was entered into by the licensee to perform alarm systems services; and
    - (iii) The aggrieved party has exhausted all civil remedies against the licensee or his estate and has complied with these rules.
  - (b) the following shall be excluded from "reimbursable losses":
    - (i) Losses of spouses, children, parents, grandparents, siblings, partners, associates and employees of the licensee causing the losses;
    - (ii) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby; and
    - (iii) Losses which have been otherwise received from or paid by or on behalf of the licensee who defaulted on an obligation.

*Statutory Authority G.S. 74D-30; 74D-31.*

**.0402 PETITION FOR HEARING/  
APPLICATION FOR RELIEF**

The Board shall prepare a Form of Petition for Hearing and Application for Relief which shall require the following minimum information:

- (1) The name and address of the aggrieved party;
- (2) The name and address of the licensee who defaulted on an obligation;
- (3) The amount of the alleged loss for which application is made;

- (4) The date or period of time during which the alleged loss was incurred;
- (5) A general statement of facts relative to the application;
- (6) Verification by the aggrieved party;
- (7) All supporting documents, including, but not limited to:
  - (a) Copies of all contracts, invoices, returned checks, etc.;
  - (b) Copies of all court proceedings against the licensee; and
  - (c) Copies of all documents showing any reimbursement or receipt of funds in payment of any portion of the loss.

*Statutory Authority G.S. 74D-31.*

**.0403 PROCESSING APPLICATIONS**

- (a) The Board shall cause each application to be sent to the administrator for investigation and report. A copy of the application shall be served upon or sent by registered mail to the last known address of the licensee who it is claimed defaulted on an obligation.
- (b) The Administrator shall conduct such investigation in such manner as he deems necessary and desirable in order to determine whether the application is for a reimbursable loss and in order to guide and advise the Board in determining the extent, if any, for which the application should be paid from the fund.
- (c) A report from the Administrator shall be submitted to the Chairman of the Board within a reasonable time.
- (d) The Board shall hold a hearing on every application filed by an aggrieved party. The hearing shall be held before the Board and shall follow the guidelines set out in Chapter 150B of the General Statutes of North Carolina.

*Statutory Authority G.S. 74D-31.*

**TITLE 15A - DEPARTMENT OF  
ENVIRONMENT, HEALTH, AND  
NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2B .0317.*

*The proposed effective date of this action is July 1, 1990.*

*The public hearing will be conducted at 7:00 p.m. on February 15, 1990 at Courtroom, Sheriff's*

Office, 1 Queen Elizabeth Avenue, Manteo, North Carolina.

*Comment Procedures:* All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information contact Suzanne H. Keen, Division of Environmental Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-5083.

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

#### SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

##### .0317 PASQUOTANK RIVER BASIN

(c) The Pasquotank River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) May 18, 1977;
- (3) December 13, 1979;
- (4) January 1, 1985;
- (5) February 1, 1986;
- (6) January 1, 1990;
- (7) July 1, 1990.

(c) The Schedule of Classifications and Water Quality Standards for the Pasquotank River Basin was amended effective July 1, 1990 as follows:

- (1) Croatan Sound [Index No. 30-20-(1)] from a point of land on the southern side of mouth of Peter Mashoes Creek on Dare County mainland following a line eastward to Northwest Point on Roanoke Island and then from Northwest Point following a line west to Reeds Point on Dare County mainland was reclassified from Class SC to Class SB.
- (2) Croatan Sound [Index No. 30-20-(1.5)] from Northwest Point on Roanoke Island following a line west to Reeds Point on Dare County mainland to William B. Umstead Memorial Bridge was reclassified from Class SC to Class SA.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

*Notice* is hereby given in accordance with G.S. 150B-12 that the North Carolina Real Estate Commission intends to amend rule(s) cited as 21 NCAC 58A .0106 - .0107, .0502; 58C .0101 - .0105, .0107, .0203 - .0205, .0214, .0217 - .0218, .0301 - .0303, .0306 - .0307, .0309 - .0310; and adopt rule(s) cited as 21 NCAC 58C .0202, .0308, .0401 - .0407; 58D .0101 - .0102, .0201 - .0209, .0301 - .0306, .0401 - .0409, .0501.

*The proposed effective date of this action is May 1, 1990.*

*The public hearing will be conducted at 9:00 a.m. on February 15, 1990 at North Raleigh Hilton, 3415 Old Wake Forest Rd., Raleigh, NC 27609.*

*Comment Procedures:* Comments regarding the rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Real Estate Commission, Post Office Box 17100, Raleigh, NC 27619, so as to be received by the hearing date.

## CHAPTER 58 - REAL ESTATE COMMISSION

### SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

#### SECTION .0100 - GENERAL BROKERAGE

##### .0106 DELIVERY OF INSTRUMENTS

(a) Except as provided in Paragraph (b) of this Rule, every broker or salesman shall immediately, but in no event later than five days from the date of execution, deliver to the parties thereto copies of any contract, offer, lease, or option affecting real property.

(b) A broker or salesman who has the express written authority to enter into leases or rental agreements on behalf of a property owner shall deliver to the owner within 30 days from the date of execution, copies of leases or rental agreements when the tenancy is less than 30 days, may be relieved of his duty under Paragraph (a) of this Rule to deliver copies of leases or rental agreements to the property owner, if the broker:

- (1) obtains the express written authority of the property owner to enter into and retain copies of leases or rental agreements on behalf of the property owner;

- (2) executes the lease or rental agreement on a pre-printed form, the material terms of which may not be changed by the broker without prior approval by the property owner except as may be required by law;
- (3) promptly provides a copy of the lease or rental agreement to the property owner upon reasonable request; and
- (4) delivers to the property owner within 45 days following the date of execution of the lease or rental agreement, an accounting which identifies the leased property and which sets forth the names of the tenants, the rental rates and rents collected.

*Statutory Authority G.S. 93A-3(c).*

**.0107 HANDLING AND ACCOUNTING OF FUNDS**

(h) A broker may transfer earnest money deposits in his possession collected in connection with a sales transaction to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A broker or salesman shall not disburse prior to closing settlement any earnest money in his possession for any ~~services performed in connection with a real estate transaction~~ other purpose without the written consent of the parties.

*Statutory Authority G.S. 93A-3(c).*

**SECTION .0500 - LICENSING**

**.0502 CORPORATIONS**

(c) After filing a written application with the Commission and upon a showing that at least one executive officer of said corporation holds a current broker's license in good standing and will serve as principal broker of the corporation, the corporation will be licensed provided it appears that the applicant corporation employs and is directed by personnel possessed of the requisite truthfulness, honesty and integrity. ~~Each principal broker shall notify the Commission in writing of any change in his status as principal broker within ten days following the change.~~

(e) The principal broker of a corporation shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the corporation at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the corporation;
- (3) the proper display of the real estate license certificate of the corporation at the prin-

cipal office of the corporation at which real estate brokerage activities are conducted and a photocopy of such license at each branch office thereof;

- (4) notifying the Commission of any change of business address or trade name of the corporation and the registration of any assumed business name adopted by the corporation for its use; and
- (5) notifying the Commission in writing of any change of his status as principal broker within ten days following the change.

*Statutory Authority G.S. 93A-3(c); 93A-4 (a), (b), (d).*

**SUBCHAPTER 58C - REAL ESTATE AND APPRAISAL EDUCATION**

**SECTION .0100 - SCHOOLS**

**.0101 APPLICABILITY: REQUIREMENT FOR APPROVAL**

This Section applies to all schools, except private real estate schools, offering either real estate pre-licensing courses prescribed by G.S. 93A-4(a) or appraisal pre-licensing or pre-certification courses prescribed by G.S. 93A-73(a). In order for courses conducted by a school to be recognized as real estate pre-licensing courses or appraisal pre-licensing or pre-certification courses by the Commission, the school must obtain approval by the Commission prior to the commencement of any such courses.

*Statutory Authority G.S. 93A-4(a),(d).*

**.0102 APPLICATION FOR APPROVAL**

Schools seeking approval to conduct real estate pre-licensing courses or appraisal pre-licensing or pre-certification courses must make written application to the Commission upon a form prescribed by

the Commission. Schools shall submit a separate application for each separate department under which courses are to be conducted.

*Statutory Authority G.S. 93A-4(a),(d).*

**.0103 CRITERIA FOR APPROVAL**

(a) After due investigation and consideration, approval shall be granted to a school when it is shown to the satisfaction of the Commission that:

- (1) The school has submitted all information required by the Commission;
- (2) The school is a North Carolina post-secondary educational institution licensed or approved by the State Board of Commu-

nity Colleges or the Board of Governors of the University of North Carolina or a North Carolina private business or trade school licensed under G.S. 115D-571; and

- (3) The courses to be conducted comply with the standards described in Section 1100 Section .0300 of this Subchapter.

(b) A North Carolina college or university which grants a baccalaureate or higher degree with a major or minor in the field of real estate or a closely related field may request that appropriate real estate and related courses in its curriculum be approved by the Commission as equivalent to the real estate pre-licensing education program prescribed by G.S. 93A-4(a). Any such institution may also request that real estate appraisal and related courses in its curriculum be approved by the Commission as equivalent to the appraiser pre-licensing or pre-certification education program prescribed by G.S. 93A-73(a).

the Commission may, in its discretion, grant such approval and may exempt such school from compliance with the course standards set forth in Section 1100 Section .0300 of this Subchapter.

*Statutory Authority G.S. 93A-4(a),(d).*

#### **.0104 SCOPE, DURATION AND RENEWAL OF APPROVAL**

(a) Approval extends only to the courses and locations reported in the application for school approval.

(b) Commission approval of schools shall terminate on the second December 31 following the effective date of approval.

(c) Schools must renew their approval to conduct real estate pre-licensing courses or appraisal pre-licensing or pre-certification courses by satisfying the criteria for original approval described in Rule 1003 Rule .0103 of this Section. In order to assure continuous approval, renewal applications should be filed with the Commission biennially according to a schedule established by the Executive Director.

*Statutory Authority G.S. 93A-4(a),(d).*

#### **.0105 WITHDRAWAL OR DENIAL OF APPROVAL**

~~((~~ The Commission may deny or withdraw approval of any school upon finding that such school has:

- (1) refused or failed to comply with any of the provisions of Sections 1000 or 1100 Sections .0100 or .0300 of this Subchapter;
- (2) obtained or used, or attempted to obtain or use, in any manner or form, North Ca-

rolina real estate or appraiser licensing or certification examination questions; or

- (3) compiled a salesman or broker licensing or certification examination performance record for any annual reporting period which is substantially below the performance record of all first-time examination candidates.

~~(b) In all proceedings to withdraw or deny approval, the provisions of Chapter 150B of the General Statutes shall be applicable.~~

*Statutory Authority G.S. 93A-4(a),(d).*

#### **.0107 USE OF EXAMINATION PERFORMANCE DATA**

An approved school may utilize for advertising or promotional purposes licensing or certification examination performance data provided to the school by the Commission, provided that any disclosure of such data by the school must be accurate and must:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the state;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; ~~and~~
- (3) state that the disclosed data was provided by the Commission; and
- (4) ~~((~~ be presented in a manner that is not misleading.

*Statutory Authority G.S. 93A-4(a),(d).*

#### **SECTION .0200 - PRIVATE REAL ESTATE SCHOOLS**

##### **.0202 ORIGINAL APPLICATION FEE**

The original license application fee shall be two hundred dollars (\$200.00) for each proposed school location and forty dollars (\$40.00) for each real estate pre-licensing course and appraisal pre-licensing and pre-certification course for which the applicant requests approval. The fee shall be paid by certified check, bank check or money order payable to the North Carolina Real Estate Commission and is nonrefundable. The school may offer approved courses at any licensed school location as frequently as is desired during the licensing period without paying additional course fees. Requests for approval of additional courses which are submitted subsequent to filing an original license application shall be accompanied by the appropriate fee of forty dollars (\$40.00) per course.

*Statutory Authority G.S. 93A-33.*

**.0203 SCHOOL NAME**

The official name of any licensed private real estate school must contain the words "real estate" and other descriptive words which clearly identify the school as a real estate school and which distinguish the school from other licensed private real estate schools. If the school is to conduct appraisal pre-licensing or pre-certification courses and will not conduct real estate pre-licensing courses, then the school name must contain the word "appraisal" in addition to the words "real estate". The school name must be used in all school publications and advertising.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

**.0204 COURSES**

Schools shall comply with the provisions of Section .0300 of this Subchapter regarding ~~real estate~~ pre-licensing and pre-certification courses.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

**.0205 ADDITIONAL COURSE OFFERINGS**

Schools may offer ~~real estate~~ courses in addition to those described in Section .0300 of this Subchapter provided that references to such courses are not made or published in a manner which implies that such courses are sanctioned by the Commission. However, if licensure as a private business or trade school under G.S. 115D-571 is required in order for the school to offer such additional courses, then the school must obtain such license prior to offering such additional courses.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

**.0214 ADVERTISING AND RECRUITMENT ACTIVITIES**

(a) A school may utilize for advertising or promotional purposes licensing or certification examination performance data provided to the school by the Commission, provided that any disclosure of such data by the school must be accurate and must:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the state;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; ~~and~~
- (3) state that the disclosed data was provided by the Commission; and

(4) ~~(3)~~ be presented in a manner that is not misleading.

(b) Schools shall not make or publish, by way of advertising or otherwise, any false or misleading statement regarding employment opportunities which may be available as a result of successful completion of a course offered by that school or acquisition of a real estate ~~broker or salesman~~ license or an appraiser license or certification.

(c) Schools shall not use endorsements or recommendations of any person or organization, by way of advertising or otherwise, unless such person or organization has consented in writing to the use of the endorsement or recommendation and is not compensated for such use.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

**.0217 LICENSE RENEWAL AND FEES**

(a) Private real estate school licenses expire on the next June 30 following the date of issuance. In order to assure continuous licensure, applications for license renewal, accompanied by the prescribed renewal fee, should be filed with the Commission annually on or before June 1. Incomplete renewal applications not completed by July 1 shall be treated as original license applications.

(b) The license renewal fee shall be one hundred dollars (\$100.00) for each previously licensed school location and twenty dollars (\$20.00) for each real estate pre-licensing course and appraisal pre-licensing and pre-certification course for which the applicant requests continuing approval. The fee shall be paid by check payable to the North Carolina Real Estate Commission and is nonrefundable. If the applicant requests approval of additional courses for which approval was not granted in the previous year, the fee for such additional courses is forty dollars (\$40.00) per course.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

**.0218 LICENSING EXAM  
CONFIDENTIALITY: SCHOOL  
PERFORM./LICENSING**

(a) Schools shall not obtain or use, or attempt to obtain or use, in any manner or form, North Carolina real estate or appraiser licensing or certification examination questions.

(b) Schools must maintain a satisfactory performance record on the real estate and appraiser licensing and certification examinations. A school performance record that is substantially below the performance record of all first-time examination candidates during any annual re-

porting period shall be considered unsatisfactory under this Rule.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

## SECTION .0300 - PRE-LICENSING AND PRE-CERTIFICATION COURSES

### .0301 PURPOSE AND APPLICABILITY

This Section establishes minimum standards for real estate pre-licensing courses prescribed by G.S. 93A-4(a) and appraisal pre-licensing and pre-certification courses prescribed by G.S. 93A-73(a). Except where a school is approved under Rule .1003(b) Rule .0103(b) of this Subchapter, these course standards must be satisfied in order for a school to be approved or licensed, as appropriate, to conduct real estate pre-licensing courses or appraisal pre-licensing or pre-certification courses. Except for the specific exceptions stated in Rule .0403(a) of this Subchapter, these course standards are also applicable to appraisal trade organization courses that are recognized under Section .0400 of this Subchapter as equivalent to the appraisal pre-licensing and pre-certification courses prescribed in Rule .0302(b) and (c) of this Section. The Commission will recognize real estate pre-licensing courses and appraisal pre-licensing and pre-certification courses, as well as equivalent appraisal trade organization courses, ~~conducted in this state~~ only if such courses comply with these standards.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).*

### .0302 PROGRAM STRUCTURING

(a) Real estate pre-licensing education programs must be structured as prescribed in G.S. 93A-4(a). The salesman course must be a prerequisite for enrollment in the advanced broker courses.

(b) Appraisal pre-licensing (residential appraiser) education programs must consist of the following three courses, each involving a minimum of 30 classroom hours:

- (1) Introduction to Real Estate Appraisal;
- (2) Valuation Principles and Procedures; and
- (3) Applied Residential Property Valuation.

These courses must be taken sequentially in the order listed.

(c) Appraisal pre-certification (general appraiser) education programs must consist of the following three courses, each involving a minimum of 30 classroom hours, in addition to the three residential appraiser courses prescribed in Paragraph (b) of this Rule:

- (1) Introduction to Income Property Appraisal;
  - (2) Advanced Income Capitalization Procedures; and
  - (3) Applied Income Property Valuation.
- These courses must be taken sequentially in the order listed and the residential appraiser courses must be a prerequisite for these courses.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).*

### .0303 COURSE CONTENT

(a) All courses shall consist of instruction in the subject areas and at the competency and instructional levels prescribed in the Commission's course syllabi.

(b) Courses may also include coverage of additional related subject areas not prescribed by the Commission; however, any such course must provide additional class time above the minimum requirement of 30 classroom hours for the coverage of such additional subject areas.

(c) Classroom time and instructional materials may be utilized for instructional purposes only and not for promoting the interests of or recruiting employees or members for any particular real estate broker, real estate brokerage firm, or real estate franchise, appraiser, appraisal firm or appraisal trade organization.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).*

### .0306 TEXTBOOKS

Each course must utilize a textbook or course materials which are approved by the Commission as well as any additional instructional materials which may be prescribed by the Commission for such course.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).*

### .0307 REAL ESTATE INSTRUCTORS

(a) Except as indicated in Paragraph (b) of this Rule, all real estate pre-licensing courses must be taught by instructors who possess good moral character and either the minimum real estate education and experience qualifications listed in this Rule for each course or other qualifications that are found by the Commission to be equivalent to those listed. These qualification requirements must be met on a continuing basis. For a previously approved instructor, experience in teaching a North Carolina real estate pre-licensing course may be substituted for any required experience in real estate brokerage, real estate law



practice, or mortgage lending when a school is seeking continued approval of the instructor to teach such course.

- (1) **Fundamentals of Real Estate:** A current North Carolina salesman or broker license in good standing, 120 classroom hours of real estate education excluding company or franchise in-service sales training, and two years' full-time general real estate brokerage experience within the previous five years.
  - (2) **Real Estate Law:** A license to practice law in North Carolina and either experience in closing at least ten real estate sales transactions within the previous three years or completion of a real estate practice course in law school.
  - (3) **Real Estate Finance:** One year full-time experience within the previous three years as a mortgage loan officer specializing in first mortgage loans, or two years full-time experience within the previous three years as a general loan officer with an institution which makes a substantial number of first mortgage loans, or a current North Carolina broker license in good standing and a minimum of five years' full-time general real estate brokerage experience within the previous seven years.
  - (4) **Real Estate Brokerage Operations:** A current North Carolina broker license in good standing, 120 classroom hours of real estate education excluding company or franchise in-service sales training, and three years' full-time general real estate brokerage experience within the previous five years including at least one year as broker-owner, designated broker-in-charge or managing broker of a multi-agent real estate firm or office.
- (b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-half of any course, provided that no one individual guest lecturer may teach more than one-third of any course, and provided further that each guest lecturer possesses experience directly related to the particular subject area he is teaching.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).*

#### **.0308 APPRAISAL INSTRUCTORS**

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal pre-licensing and pre-certification courses must be taught by instructors who possess good moral character and either the mi-

nimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Commission to be equivalent to those listed. These qualification requirements must be met on a continuing basis. For a previously-approved instructor, experience in teaching appraisal courses may be substituted for any required appraisal experience when a school is seeking continued approval of the instructor. The minimum qualifications are as follows:

- (1) **Pre-licensing (residential appraiser)** courses: 90 classroom hours of real estate appraisal education and two years full-time experience as a residential real estate appraiser within the previous three years. After July 1, 1991, instructors must also be state-licensed real estate appraisers.
  - (2) **Pre-certification (general appraiser)** courses: 180 classroom hours of real estate appraisal education and five years' full-time experience as a general real estate appraiser within the previous seven years, with at least 50 percent of such experience being in income property appraising. After July 1, 1991, instructors must also be state-certified real estate appraisers.
- (b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-third of any course, provided that each guest lecturer possesses experience directly related to the particular subject area he is teaching.

*Statutory Authority G.S. 93A-33; 93A-75(a).*

#### **.0309 CERTIFICATION OF COURSE COMPLETION**

~~License applicants~~ Applicants for licensure or certification must provide verification of satisfactory course completion on an official certificate in a format prescribed by the Commission. Such certificates will not be accepted if they were issued to students prior to the last scheduled class meeting of a course. Certificates of course completion submitted to the Commission must be on the official stationery of the school and must have the original signature or signature stamp of the dean, director, department head or other official responsible for supervising the conduct of the course.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).*

#### **.0310 COURSE RECORDS**

(a) Schools must retain on file for five years copies of all grade and attendance records and

must make such records available to the Commission upon request.

(b) Schools must retain on file for two years a master copy of each final course examination, and such file copy shall indicate the answer key, ~~the school name, course location, course title,~~ course dates and name of instructor. Examination file copies shall be made available to the Commission upon request.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).*

## SECTION .0400 - APPRAISAL TRADE ORGANIZATION COURSES

### .0401 PURPOSE AND APPLICABILITY

This Section establishes procedures by which an appraisal trade organization may seek recognition of its appraisal courses as equivalent to the appraisal pre-licensing and pre-certification courses required by G.S. 93A-73(a) and specified in Rule .0302 of this Subchapter.

*Statutory Authority G.S. 93A-75(a) and (b).*

### .0402 APPLICATION AND FEE

(a) Appraisal trade organizations seeking recognition of their courses as equivalent to North Carolina appraisal pre-licensing and pre-certification courses must make written application to the Commission on a form prescribed by the Commission. Application must be made by an authorized administrative official from the principal office of the appraisal trade organization. Applications will not be accepted from a chapter or other subsidiary of an appraisal trade organization.

(b) The original application fee shall be two hundred fifty dollars (\$250.00) for each course which the Commission is being requested to evaluate and recognize. The fee shall be paid by certified check, bank check or money order payable to the North Carolina Real Estate Commission and is nonrefundable. An organization may offer recognized equivalent courses as frequently as is desired during the period for which recognition is granted without paying additional course fees.

*Statutory Authority G.S. 93A-75(a) and (b).*

### .0403 CRITERIA FOR COURSE RECOGNITION

(a) Appraisal trade organization courses must be found by the Commission to be substantially equivalent to the appraisal pre-licensing and pre-certification courses prescribed in Rule .0302(b) and (c) of this Subchapter. Such courses must

be conducted in accordance with the minimum course standards prescribed in Section .0300 of this Subchapter, provided that the following exceptions to those standards shall apply:

(1) Appraisal trade organization education programs may be structured differently from the program structure prescribed in Rule .0302(b) and (c) of this Subchapter; however, the programs must provide for appropriate prerequisites for advanced courses and each appraisal trade organization course for which commission recognition is sought must consist of a minimum of 15 classroom hours.

(2) Appraisal trade organization courses may be scheduled in a manner that provides for class meetings of up to seven classroom hours in any given day and 42 classroom hours in any given seven-day period; however, equivalent credit for courses scheduled for more than 30 classroom hours per seven-day period will be limited to 30 classroom hours per seven-day period.

(3) Instructor qualifications will generally not be approved by the Commission on an individual basis; however, the appraisal trade organization must have and enforce written instructor qualification requirements that are equivalent to those prescribed in Rule .0308 of this Subchapter.

(4) Appraisal trade organizations are not subject to the 90-day limit for allowing students to make up a missed course examination or to retake a failed course examination without repeating the course; however, the appraisal trade organization must have an appropriate written policy regarding this matter.

(b) The appraisal trade organization must have and enforce written policies which require their courses to be conducted in classroom facilities that provide an appropriate learning environment.

(c) The appraisal trade organization must have written policies with regard to course cancellation and the refund of tuition and other course fees. Such policies must be provided to prospective students prior to acceptance of any fees from such prospective students and the organization must enforce such policies in a fair and reasonable manner.

(d) Various combinations of appraisal trade organization courses may be recognized as equivalent to single North Carolina appraisal pre-licensing or pre-certification courses or to the North Carolina appraisal pre-licensing (residential appraiser) or appraisal pre-certification (gen-

eral appraiser) education programs; however, equivalent credit will be granted only in increments of 30 classroom hours.

*Statutory Authority G.S. 93A-75(a) and (b).*

**.0404 CHANGES DURING THE RECOGNITION PERIOD**

Appraisal trade organizations must obtain advance approval from the Commission for any changes to be made in commission-recognized equivalent courses with regard to program structuring, course content, course completion standards, textbooks or course materials, or instructor qualification requirements. Requests for approval of such changes must be in writing.

*Statutory Authority G.S. 93A-75(a) and (b).*

**.0405 ADVERTISING OF RECOGNITION AND EXAMINATION PERFORMANCE**

(a) An organization that has obtained commission recognition of its courses under this Section may advertise that such courses are "recognized" for equivalent credit toward the requirements for initial North Carolina real estate appraiser licensure or certification. Such advertisement may not, however, state that such courses are "approved" North Carolina appraisal pre-licensing or pre-certification courses.

(b) An organization that has obtained commission recognition of its courses under this Section may utilize for advertising or promotional purposes licensing or certification examination performance data provided to the organization by the Commission, provided that any disclosure of such data by the organization must be accurate and must:

- (1) be limited to the annual examination performance data for the particular organization and for all examination candidates in the state;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination;
- (3) state that the disclosed data was provided by the Commission; and
- (4) be presented in a manner that is not misleading.

*Statutory Authority G.S. 93A-75(a) and (b).*

**.0406 RENEWAL OF COMMISSION RECOGNITION: FEE**

(a) Commission recognition of appraisal trade organization courses expires on the next June 30 following the date of issuance, except that ap-

provals granted prior to July 1, 1990 shall not expire until June 30, 1991. In order to assure continuous recognition of courses, applications for renewal of commission recognition, accompanied by the prescribed renewal fee, should be filed with the Commission annually on or before June 1. Incomplete renewal applications which are not completed by July 1 shall be treated as original applications.

(b) The annual fee for renewal of commission recognition shall be one hundred twenty-five dollars (\$125.00) for each course for which renewal of commission recognition is requested. The fee shall be paid by check payable to the North Carolina Real Estate Commission and is nonrefundable. If the organization requests commission recognition of additional courses for which recognition was not granted in the previous year, the fee for such additional courses is two hundred fifty dollars (\$250.00) per course.

*Statutory Authority G.S. 93A-75(a) and (b).*

**.0407 WITHDRAWAL OR DENIAL OF COMMISSION RECOGNITION**

The Commission may deny or withdraw recognition of any appraisal trade organization courses upon finding that:

- (1) the organization has made any false statements or presented any false information in connection with an application for commission recognition of its courses;
- (2) the organization has refused or failed to comply with any of the provisions of this Section;
- (3) the organization's courses do not comply with the course standards prescribed in Rule .0403 of this Section and Section .0300 of this Subchapter;
- (4) the organization has obtained or used, or attempted to obtain or use, in any manner or form, North Carolina appraiser licensing or certification examination questions; or
- (5) the organization has compiled an appraiser licensing or certification examination performance record for any annual reporting period which is substantially below the performance record of all first-time examination candidates.

*Statutory Authority G.S. 93A-75(a) and (b).*

**SUBCHAPTER 58D - REAL ESTATE APPRAISERS**

**SECTION .0100 - APPLICATION FOR APPRAISER LICENSE OR CERTIFICATE**

**.0101 FORM**

A person who wishes to file an application for a real estate appraiser license or certificate may obtain the required form upon request to the Commission. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, a recent passport size photograph of the applicant, places of residence and employment, education, and such other information as may be necessary to identify the applicant and determine his qualifications and fitness for licensure or certification.

*Statutory Authority G.S. 93A-73(a); 93A-77.*

#### **.0102 FILING AND FEES**

(a) Properly completed applications must be received in the Commission's office or postmarked not later than the filing date established by the Executive Director for a scheduled examination and must be accompanied by the appropriate fee. Once the application has been filed and processed, the application fee may not be refunded.

(b) The following fees shall be charged:

- (1) application for original appraiser license .....\$100.00
- (2) application for original appraiser certificate .....\$100.00

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Real Estate Commission.

*Statutory Authority G.S. 93A-73(a),(b); 93A-77.*

### **SECTION .0200 - APPRAISER LICENSING AND CERTIFICATION**

#### **.0201 QUALIFICATIONS FOR APPRAISER LICENSURE AND CERTIFICATION**

(a) Applicants for licensure as a state-licensed real estate appraiser and for certification as a state-certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93A-73. Licensure as a state-licensed real estate appraiser is not a prerequisite for certification as a state-certified real estate appraiser.

(b) When a state-licensed real estate appraiser becomes certified as a state-certified real estate appraiser, his licensure shall be immediately cancelled by the Commission and he must return his license certificate and any pocket renewal card to the Commission within ten days of the date of certification as a state-certified real estate appraiser.

*Statutory Authority G.S. 93A-73; 93A-77.*

#### **.0202 CHARACTER**

(a) At a meeting of the Commission following each real estate appraiser licensing or certification examination, the applicants who have passed the examination shall be considered for licensing or certification. When the moral character of an applicant is in question, action by the Commission will be deferred until the applicant has affirmatively demonstrated that he possesses the requisite truthfulness, honesty and integrity.

(b) When the moral character of an applicant is in question, the Commission shall notify the applicant and the applicant shall be entitled to demonstrate his character and fitness for licensure or certification at a hearing before the Commission.

(c) Notice to the applicant that his moral character is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Commission. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his application for licensing or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from re-applying for licensure or certification.

*Statutory Authority G.S. 93A-73(c); 93A-77.*

#### **.0203 LICENSE AND CERTIFICATE RENEWAL**

(a) A holder of an appraiser license or certificate desiring the renewal of such license or certificate shall, during the month of June, apply for same in writing upon a form approved by the Commission and shall forward the required fee of seventy-five dollars (\$75.00). Forms are available upon request to the Commission.

(b) As a condition of renewal, all licensees and certificate holders, either active or inactive, resident or non-resident, shall be required to satisfy the continuing education requirements set forth in Rule .0204 of this Section.

(c) Any person who acts or holds himself out as a state-licensed or state-certified real estate appraiser while his appraiser license or certificate is expired will be subject to disciplinary action and penalties as prescribed in Chapter 93A of the North Carolina General Statutes.

*Statutory Authority G.S. 93A-74(a),(b); 93A-77.*

#### **.0204 CONTINUING EDUCATION**

As a prerequisite to renewal of a real estate appraiser license or certificate for the year July 1, 1992 - June 30, 1993 and subsequent years, the

licensee or certificate holder shall present evidence satisfactory to the Commission of having completed, during the immediately preceding year, education consisting of at least ten classroom hours of instruction approved by the Commission.

*Statutory Authority G.S. 93A-74(a),(b); 93A-77.*

**.0205 INACTIVE STATUS**

(a) A licensee or certificate holder shall be assigned by the Commission to inactive status upon written request to the Commission.

(b) A licensee or certificate holder whose appraiser license or certificate is on inactive status shall be returned to active status upon making a written request to the Commission.

(c) A licensee or certificate holder on inactive status shall not be entitled to act as a state-licensed or state-certified real estate appraiser; however, in order to continue to hold an appraiser license or certificate, the licensee or certificate holder whose license or certificate is on inactive status must renew his license, including payment of the prescribed renewal fee and completion of all continuing education.

(d) The Commission may take disciplinary action against a licensee or certificate holder on inactive status.

*Statutory Authority G.S. 93A-77.*

**.0206 EXPIRED LICENSE OR CERTIFICATE**

(a) Expired real estate appraiser licenses and certificates may be reinstated within 12 months after expiration upon proper application and payment to the Commission of the seventy-five dollar (\$75.00) renewal fee plus a late filing fee of ten dollars (\$10.00) per month for each month or part thereof that such license or certificate is lapsed.

(b) Licenses and certificates expired for more than 12 months may be considered for reinstatement upon proper application, payment of the one hundred dollar (\$100.00) original license or certificate fee, payment of the one hundred twenty dollar (\$120.00) late filing fee, and provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed. Such applications will be reviewed by the Commission to determine whether an examination and/or additional real estate appraisal education will be required.

*Statutory Authority G.S. 93A-74(c); 93A-77.*

**.0207 PAYMENT OF LICENSE AND CERTIFICATE FEES**

Checks given the Commission in payment of real estate appraiser license and certificate fees which are returned unpaid shall be considered cause for licensed or certificate denial, suspension, or revocation.

*Statutory Authority G.S. 93A-77.*

**.0208 REPLACEMENT LICENSE OR CERTIFICATE FEE**

A licensee or certificate holder may, by filing a prescribed form and paying a five dollar (\$5.00) fee to the Commission, obtain a duplicate real estate appraiser license or certificate or pocket card to replace an original license certificate or pocket card which has been lost, damaged or destroyed or if the name of the licensee or certificate holder has been lawfully changed.

*Statutory Authority G.S. 93A-74(d); 93A-77.*

**.0209 FEDERAL APPRAISER REGISTRY**

Licenses and certificate holders who are qualified for enrollment in the federal roster or registry of state-licensed and state-certified real estate appraisers may apply for enrollment or for the renewal or reinstatement of such enrollment in writing upon a form approved by the Commission accompanied by the fee established for that purpose by the appropriate federal agency or instrumentality.

*Statutory Authority G.S. 93A-79(e); 93A-77.*

**SECTION .0300 - APPRAISER EXAMINATIONS**

**.0301 TIME AND PLACE**

(a) Examinations for real estate appraiser licenses and certificates will be scheduled at such times and places as determined by the Executive Director. Applicants will be scheduled for examination based on the date of application filing in accordance with the Commission's published schedule of examination dates and application filing dates. Applicants will be given written notice of when and where to appear for examination.

(b) Except as provided in Paragraph (c) of this Rule, an applicant who has been scheduled for a particular examination date will not be rescheduled for a later examination date without filing another application and fee unless a request to be rescheduled is made at least 15 days in advance of the scheduled examination date. A scheduled examination date may only be postponed until one of the next two following scheduled examination dates.

(c) An applicant may be granted an excused absence from a scheduled examination if he provides evidence satisfactory to the Commission that his absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the examination date will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from taking the examination.

*Statutory Authority G.S. 93A-73(c); 93A-77.*

#### **.0302 SUBJECT MATTER**

(a) The examination for licensure as a state-licensed real estate appraiser shall test applicants on the following general subject areas:

- (1) basic real property law;
- (2) concepts of value;
- (3) forces affecting real estate values;
- (4) residential real estate financing;
- (5) residential construction and design;
- (6) the appraisal process;
- (7) valuation principles and procedures;
- (8) application of valuation principles and procedures to the valuation of various types of residential properties and to related appraisal assignments;
- (9) standards of appraisal practice;
- (10) the North Carolina Real Estate Appraisers Act and related commission rules; and
- (11) related subject areas.

(b) In addition to the subject areas listed in (a) of this Rule, the examination for certification as a state-certified real estate appraiser shall test applicants on the following general subject areas:

- (1) income capitalization principles and procedures;
- (2) application of valuation principles and procedures to the valuation of all types of income-producing and other properties and to related appraisal assignments; and
- (3) related subject areas.

*Statutory Authority G.S. 93A-73(c); 93A-77.*

#### **.0303 RE-EXAMINATION**

If an applicant for a real estate license or certificate fails to pass or appear for any examination for which he has been scheduled, he shall make written application to the Commission upon a

prescribed form accompanied by the appropriate fee if he wishes to be scheduled for another examination.

*Statutory Authority G.S. 93A-73(c); 93A-77.*

#### **.0304 CHEATING AND RELATED MISCONDUCT**

Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with any person other than an examination supervisor during an examination. Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, and denial of a real estate appraiser license or certificate, as well as for disciplinary action if the applicant holds an appraiser license.

*Statutory Authority G.S. 93A-73(c); 93A-77.*

#### **.0305 CONFIDENTIALITY OF EXAMINATIONS**

Licensing and certification examinations are the exclusive property of the Commission and are confidential. No applicant, licensee, or certificate holder shall obtain, attempt to obtain, receive or communicate to other persons examination questions. Violation of this Rule shall be grounds for denial of a real estate appraiser license or certificate if the violator is an applicant and disciplinary action if the violator holds an appraiser license.

*Statutory Authority G.S. 93A-77.*

#### **.0306 EXAMINATION REVIEW**

(a) An applicant who fails an examination may review his examination at such times and places as are scheduled by the Executive Director. A request to review an examination must be made not later than the request deadline date established by the Executive Director for a scheduled examination review date. Failure to request an appointment to review an examination by the request deadline date shall constitute a waiver of the right to review such examination. Applicants who pass an examination may not review their examination. Applicants who review their examination may not be accompanied by any other person at a review session, nor may any other person review an examination on behalf of an applicant.

(b) An applicant may be granted an excused absence from a scheduled examination review if he provides evidence satisfactory to the Commission that his absence was the direct result of

an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the scheduled examination review will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from attending the examination review. An applicant who fails to appear for a scheduled examination review and who does not obtain an excused absence in accordance with this Rule shall be deemed to have waived his right to review his examination.

*Statutory Authority G.S. 93A-73(c); 93A-77.*

**SECTION .0400 - GENERAL APPRAISAL PRACTICE**

**.0401 USE OF TITLES**

(a) A state-licensed real estate appraiser shall utilize the term "state-licensed residential real estate appraiser" when performing appraisals of residential real estate, as defined in G.S. 93A-72, or any interest therein. A state-certified real estate appraiser shall utilize either the term "state-certified general real estate appraiser" or "state-certified residential/ general real estate appraiser" when performing appraisals of all types of real estate or any interest therein.

(b) Licensure or certification as a real estate appraiser is granted only to persons and does not extend to a business entity operated by a state-licensed or state-certified real estate appraiser.

*Statutory Authority G.S. 93A-77.*

**.0402 DISPLAY OF LICENSES AND CERTIFICATES**

(a) The real estate appraiser license or certificate of a managing appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the managing appraiser shall be prominently displayed at such office.

(b) The annual license or certificate renewal pocket card issued by the Commission to each state-licensed or state-certified real estate appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

*Statutory Authority G.S. 93A-77.*

**.0403 ADVERTISING**

(a) When advertising or otherwise holding himself out as a real estate appraiser, a state-licensed real estate appraiser shall identify himself as a "state-licensed residential real estate appraiser" and a state-certified real estate appraiser shall identify himself as either a "state-certified general real estate appraiser" or a "state-certified residential/general real estate appraiser".

(b) A state-licensed or state-certified real estate appraiser doing business as a partnership, association, corporation or other business entity shall not represent in any manner to the public that the partnership, association, corporation or other business entity is either licensed or certified by the State of North Carolina to engage in the business of real estate appraising.

(c) In the event that any licensee or certificate holder shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the licensee or certificate holder, he shall first notify the Commission in writing of such name and furnish the Commission with a copy of each registration of assumed name certificate filed with the office of the county register of deeds in compliance with Section 66-68, North Carolina General Statutes.

*Statutory Authority G.S. 93A-71(d); 93A-77.*

**.0404 CHANGE OF NAME OR ADDRESS**

All licensees and certificate holders shall notify the Commission in writing of each change of business address, residence address, or trade name within ten days of said change. The address shall be sufficiently descriptive to enable the Commission to correspond with and locate the licensee or certificate holder.

*Statutory Authority G.S. 93A-77.*

**.0405 CERTIFIED APPRAISALS**

(a) A state-certified real estate appraiser may perform certified appraisals on all types of real estate and may identify such appraisals as being "certified".

(b) All real estate appraisal assignments performed and all appraisal reports issued by state-certified real estate appraisers shall be deemed to be "certified" appraisals unless otherwise indicated on the appraisal report, or, in the event of an oral appraisal report, the person receiving the report is clearly informed by the state-certified appraiser that the appraisal is not a "certified" appraisal.

*Statutory Authority G.S. 93A-71(g); 93A-77.*

**.0406 APPRAISAL REPORTS**

(a) Each written appraisal report prepared by or under the direction of a state-licensed or state-certified real estate appraiser shall bear the signature of the state-licensed or state-certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state-licensed residential real estate appraiser" or the designation "state-certified general real estate appraiser" or "state-certified residential/general real estate appraiser", as applicable. Each such appraisal report shall also identify any other person who assists in the appraisal process other than by providing clerical assistance.

(b) Every state-licensed and state-certified real estate appraiser shall affix or stamp to all appraisal reports a seal of a design authorized by the Commission which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "state-licensed residential real estate appraiser" or as a "state-certified general real estate appraiser" or "state-certified residential general real estate appraiser", as applicable.

*Statutory Authority G.S. 93A-77.*

**.0407 MANAGING APPRAISER**

(a) A "managing appraiser" shall be designated with the Commission for each appraisal firm and each combined real estate brokerage and appraisal firm for which real estate appraisals are performed by:

- (1) two or more state-licensed or state-certified real estate appraisers who are employed by or associated with the firm; or
- (2) unlicensed or uncertified assistants, other than clerical employees, who are employed by or associated with the firm and who assist a state-licensed or state-certified real estate appraiser in the performance of real estate appraisals.

If one or more state-certified real estate appraisers is employed by or associated with the firm, the managing appraiser must be a state-certified real estate appraiser; however, if only state-licensed real estate appraisers are employed by or associated with the firm, the managing appraiser may be a state-licensed real estate appraiser.

(b) The designated managing appraiser shall be responsible for:

- (1) the proper display of licenses and certificates of all state-licensed and state-certified real estate appraisers employed by or associated with the firm, and ascertaining whether each licensee or certificate holder

employed by or associated with the firm has complied with Rule .0203 of this Subchapter;

- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising of appraisal services by or in the name of the firm;
- (4) the proper retention and maintenance of records relating to appraisals conducted by or on behalf of the firm;
- (5) the maintenance of a record for each of the firm's unlicensed and uncertified assistants that generally describes the nature and extent of assistance rendered in connection with each appraisal; and
- (6) the maintenance of a record for each of the firm's state-licensed real estate appraisers that generally describes the nature and extent of assistance rendered when assisting a state-certified real estate appraiser in performing an appraisal.

No licensee or certificate holder shall be managing appraiser of more than one appraisal firm or combined real estate brokerage and appraisal firm.

(c) Each managing appraiser shall notify the Commission in writing of any change in his status as managing appraiser within ten days following the change.

*Statutory Authority G.S. 93A-77.*

**.0408 SUPERVISION OF UNLICENSED AND UNCERTIFIED ASSISTANTS**

A state-licensed or state-certified real estate appraiser may employ a person or persons not licensed or certified as a real estate appraiser to assist in the performance of real estate appraisals, provided that the state-licensed or state-certified real estate appraiser:

- (1) actively and personally supervises the unlicensed and uncertified assistant;
- (2) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of an unlicensed and uncertified assistant is utilized;
- (3) signs all appraisal reports for appraisals in which the services of an unlicensed and uncertified assistant was utilized; and
- (4) prepares and furnishes to the managing appraiser, if applicable, and to each unlicensed and uncertified assistant whose services were utilized in connection with the appraisal, a report on a form prescribed by the Com-



mission describing the nature and extent of assistance rendered by the unlicensed and uncertified assistant in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal.

*Statutory Authority G.S. 93A-71(f); 93A-77.*

**.0409 SUPERVISION OF LICENSED APPRAISERS**

When a state-licensed real estate appraiser assists a state-certified real estate appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state-certified real estate appraiser, the state-certified real estate appraiser shall:

- (1) actively and personally supervise the state-licensed real estate appraiser;
- (2) review the appraisal report and supporting data used in connection with the appraisal; and
- (3) prepares and furnishes to the managing appraiser, if applicable, and to each state-licensed real estate appraiser who services were utilized in connection with the appraisal, a report on a form prescribed by the Commission describing the nature and ex-

tent of assistance rendered by the state-licensed real estate appraiser in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal.

*Statutory Authority G.S. 93A-77.*

**SECTION .0500 - STANDARDS OF APPRAISAL PRACTICE**

**.0501 APPRAISAL STANDARDS**

(a) Every state-licensed and state-certified real estate appraiser shall, in performing the acts and services of a state-licensed or state-certified real estate appraiser, comply with those appraisal practice standards known as Standards 1 and 2 of the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation, which standards are hereby adopted by reference in accordance with G.S. 150B-14(c).

(b) Copies of Standards 1 and 2 of the "Uniform Standards of Professional Appraisal Practice" are available upon request to the Commission.

*Statutory Authority G.S. 93A-77.*

*The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.*

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as \* Correction. These changes do not change the effective date of the rule.*

## TITLE 5 - DEPARTMENT OF CORRECTION

### CHAPTER 2 - DIVISION OF PRISONS

#### SUBCHAPTER 2C - CLASSIFICATION

##### SECTION .0100 - CLASSIFICATION COMMITTEES

###### .0101 GENERAL

(a) Purpose. The primary function of offender classification is the systematic process for coordinating inmate assessment and assignment procedures in order to minimize community and institutional risk, to provide opportunities for the productivity and development of the inmate, and to ensure that academic and vocational needs of inmates are an integral part of assignment decisions.

(b) Administrative Coordination and Review. The Manager of the Classification Services Section will coordinate the following classification functions:

- (1) Participates in the development of classification policy and procedures;

- (2) Participates in standardization and evaluation of diagnostic and classification procedures;
- (3) Supervision and direction of the Presence Diagnostic Program;
- (4) Staff training for diagnostic and classification personnel;
- (5) Supervision and direction of central monitoring activities;
- (6) Supervision and direction of central transfer activities; and
- (7) Other duties and responsibilities as assigned.

(c) Case Factor and Committee Review Process. This policy establishes procedures for custody classification of inmates using a case factor review process and a committee review process. The case factor review process is a procedure using an objective review of case factors specified on the classification form to govern the regular assignment of inmates to close, medium and minimum custody. The committee review process is a procedure used only for assignments to maximum custody, extended protective custody, extended administrative segregation, minimum custody levels II and III, and for consideration of exceptions to custody assignments derived from the case factor review process.

*History Note: Statutory Authority G.S. 148-4; 148-11; 148-36;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1990;  
December 1, 1984; September 28, 1978.*

##### SECTION .1000 - INTERSTATE CORRECTIONS COMPACT

###### .1002 APPLICATION

Transfers of inmates to or from the custody of the North Carolina Department of Correction shall be on a cooperative exchange basis founded upon the best interests of the State of North Carolina, Department of Correction, and the incarcerated offender.

The purpose of the Interstate Corrections Compact as prescribed by law provides for the full utilization and improvement of institutional facilities and the provision of adequate programs for the confinement, treatment, and rehabilitation of various types of offenders through the mutual development and execution of programs for the confinement, treatment, and rehabilitation of offenders.

Nothing in this Section shall be construed to create on behalf of any inmate any right or entitlement to a transfer to or from the custody of the North Carolina Department of Correction.

## FINAL RULES

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Transfers under this Section shall be upon the following conditions:

- (1) to provide for the personal safety of an inmate subject to an identifiable threat of harm after consideration of all available housing alternatives.
- (2) to provide for effective pre-release program assignments for inmates in minimum custody within twelve months of an established release date at the time of transfer.
- (3) in any case where the Secretary of Correction issues a finding that such a transfer

is in the best interest of the State of North Carolina, the Department, the inmate, and criminal justice objectives.

*History Note: Filed as a Temporary Amendment  
Eff. December 21, 1989 For a Period of 42  
Days to Expire on January 31, 1990;  
Statutory Authority G.S. 148-11;  
148-119; 148-120;  
Eff. March 5, 1980;  
Amended Eff. February 1, 1990; March 1, 1983.*

## FINAL RULES

*The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.*

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as \* Correction. These changes do not change the effective date of the rule.*

### NORTH CAROLINA ADMINISTRATIVE CODE

#### LIST OF RULES CODIFIED

JANUARY 1989

AGENCY		ACTION TAKEN
<u>DEPARTMENT OF AGRICULTURE</u>		
2	NCAC 9L .0502	Amended
	.0519	Amended
	37 .0202 - .0203	Amended
	38 .0102	Amended
	.0201 - .0203	Amended
	.0301	Amended
	.0401	Amended
	48B .0023	Amended
<u>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT</u>		
4	NCAC 16A .0001	Amended
<u>DEPARTMENT OF CORRECTION</u>		
5	NCAC 2F .2401 - .2404	Adopted
<u>DEPARTMENT OF CULTURAL RESOURCES</u>		
7	NCAC 4N .0202	Amended
	.0301 - .0304	Adopted
	5 .0203 - .0204	Amended
<u>OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR</u>		
9	NCAC 2B Executive Order Number 99	
	Eff. December 13, 1989	
	Executive Order Number 100	

Eff. December 14, 1989

DEPARTMENT OF HUMAN RESOURCES

10	NCAC	1B .0418 - .0419	Adopted
		3C .0108	* Correction
		3D .0801	Adopted
		.1001	Adopted
		3E .0316	Amended
		3H .0306	* Correction
		3R .0109 - .0110	Adopted
		.0212 - .0213	Amended
		.0303 - .0306	Amended
		.0307 - .0308	Repealed
		.0309	Amended
		.0312	Repealed
		.0313	Amended
		.0315 - .0317	Amended
		.0408	Amended
		.0423	Adopted
	3S	.0207	Amended
		.0211	Amended
		.0307	* Correction
		.0308	Amended
		.0901	Amended
		.0903	Adopted
		.1003	* Correction
	3U	.0703	Amended
		.1701	Amended
	7B	.0101	Repealed
		.0103	Amended
		.0337	Amended
		.0347	Amended
		.0349 - .0351	Amended
		.0502	Amended
	8D	.0701	Amended
	10A	.1935	Amended
		.1936	Repealed
		.1937 - .1942	Amended
		.1944	Amended
		.1946 - .1950	Amended
		.1951 - .1958	Amended
		.1960 - .1961	Amended
		.1964	Amended
	10D	.1642	Adopted
	14K	.0103	Amended
		.0403	Amended
	14M	.0601	Amended
		.0606	Amended
		.0608	Amended
		.0616	Amended
		.0619 - .0620	Adopted
	18M	.0704	Amended
		.1402	Adopted
		.1410	Adopted
	19C	.0702	Amended
	19H	.0106	Amended
	47B	.0404	Amended

DEPARTMENT OF INSURANCE

11	NCAC	10	.1102	Amended
			.1106	Amended
			.1107 - .1109	Adopted

DEPARTMENT OF JUSTICE

12	NCAC	7D	.0202	Temp. Amended Expires 07-01-90
			.0301	Amended
			.0702	Temp. Amended Expires 07-01-90
			.0707	Adopted
			.0802	Temp. Amended Expires 07-01-90
		10B	.0103	Amended
			.0106 - .0107	Adopted
			.0204	Adopted
			.0301 - .0302	Amended
			.0304 - .0305	Amended
			.0406	Amended
			.0502	Amended
			.0505	Amended
			.0601	Amended
			.0702	Amended
			.0802	Amended
			.0903 - .0904	Amended
			.0908	Amended
			.1002	Amended
			.1102 - .1104	Amended
			.1201 - .1206	Adopted
			.2001 - .2002	Amended
			.2104 - .2105	Amended

DEPARTMENT OF ENVIRONMENTAL, HEALTH, AND NATURAL RESOURCES

15	NCAC	1	Transferred and Recodified to 15A NCAC 1 Eff. November 1, 1989
		2	Transferred and Recodified to 15A NCAC 2 Eff. November 1, 1989
		3	Transferred and Recodified to 15A NCAC 3 Eff. November 1, 1989
		4	Transferred and Recodified to 15A NCAC 4 Eff. November 1, 1989
		5	Transferred and Recodified to 15A NCAC 5 Eff. November 1, 1989
		6	Transferred and Recodified to 15A NCAC 6 Eff. November 1, 1989
		7	Transferred and Recodified to 15A NCAC 7 Eff. November 1, 1989
		8	Transferred and Recodified

				to 15A NCAC 8
				Eff. November 1, 1989
	9			Transferred and Recodified
				to 15A NCAC 9
				Eff. November 1, 1989
	10			Transferred and Recodified
				to 15A NCAC 10
				Eff. November 1, 1989
	12			Transferred and Recodified
				to 15A NCAC 12
				Eff. November 1, 1989
	15			Transferred and Recodified
				to 15A NCAC 15
				Eff. November 1, 1989
	22			Transferred and Recodified
				to 15A NCAC 22
				Eff. November 1, 1989
15A	NCAC	11	.0101 - .0102	Adopted
			.0201 - .0209	Adopted
		2B	.0216	Amended
			.0219	Adopted
			.0303 - .0304	Amended
			.0309	Amended
			.0311 - .0312	Amended
			.0315 - .0317	Amended
		2D	.0901	* Correction
		7H	.1102	Amended
			.1202	Amended
			.1302	Amended
			.1402	Amended
			.1502	Amended
			.1602	Amended
			.1802	Amended
			.1902	Amended
		7J	.0206	Amended

**DEPARTMENT OF PUBLIC EDUCATION**

16	NCAC	6A	.0003	Adopted
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**DEPARTMENT OF REVENUE**

17	NCAC	1C	.0402	Amended
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**BOARD OF NURSING**

21	NCAC	36	.0202 - .0203	Amended
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**BOARD OF PHARMACY**

21	NCAC	46	.1317	Amended
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**BOARD OF PRACTICING PSYCHOLOGISTS**

21	NCAC	54	.1605	Amended
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**REAL ESTATE COMMISSION**

21	NCAC	58A	.1000	Transferred and Recodified
				to 21 NCAC 58C .0100

.1101	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0301
.1102	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0302
.1104	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0303
.1105	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0304
.1107	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0305
.1108	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0306
.1109	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0307
.1111	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0309
.1113	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0310
.1301	Eff. November 27, 1989 Transferred and Recodified to 21 NCAC 58C .0201
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.1312	Eff. November 27, 1989 Transferred and Recodified



	to 21 NCAC 58C .0212
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	Eff. November 27, 1989

**BOARD OF SANITARIAN EXAMINERS**

21	NCAC	62	.0316	Amended
			.0319	Amended
			.0403	Amended
			.0405	Amended

**OFFICE OF STATE PERSONNEL**

25	NCAC	1B	.0435 - .0436	Adopted
		1C	.0211	Amended
		1D	.0101 - .0103	Amended
			.0108	Repealed
			.0202 - .0204	Repealed
			.0210	Amended
			.0211 - .0213	Adopted
			.0302	Repealed
			.0303	Amended
			.0304	Repealed
			.0308	Adopted
			.0402	Repealed
			.0404	Repealed
			.0406	Adopted
			.0511	Amended
			.0601 - .0603	Repealed
			.0605	Amended
			.0606	Repealed
			.0608 - .0610	Adopted
			.0702	Repealed
			.0704	Repealed
			.0705	Amended
			.0706 - .0710	Adopted
			.0801	Amended
			.0802 - .0803	Repealed
			.0806	Repealed
			.0808	Adopted
			.0901	Amended
			.0904 - .0905	Repealed

	.0906	Amended
	.0908	Amended
	.0910 - .0911	Adopted
	.1101 - .1106	Repealed
	.1108 - .1109	Repealed
	.1115	Repealed
	.1117 - .1120	Repealed
	.1122 - .1128	Adopted
1E	.0501 - .0504	Repealed
	.0506 - .0507	Repealed
	.0511	Repealed
1J	.0901 - .0903	Adopted
1K	.0603 - .0611	Repealed
	.0612 - .0613	Adopted
1O	.0101	Adopted
	.0201 - .0206	Adopted
	.0301 - .0305	Adopted

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1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Economic and Community Development, Department of
5	Correction, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Environment, Health, and Natural Resources, Department of
16	Public Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	State Personnel, Office of
26	Administrative Hearings, Office of

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2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	General Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Martial & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in

44	Osteopathic Examination and Registration, Board of
46	Pharmacy, Board of
48	Physical Therapy Examiners, Board of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
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